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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 122

CHAMPLIN REFINING COMPANY, APPELLANT,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA ET AL., ETC.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

FILED MAY 29, 1931

(35,936)

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[fols. a & 1 & 2] Citation, in usual form, showing service on E. S. Ratliff et al., filed April 22, 1931, omitted in printing.

[fol. 3]

IN UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF OKLAHOMA

Equity No. 1156

CHAMPLIN REFINING CO., A CORPORATION, Complainant,

vs.

THE CORPORATION COMMISSION OF OKLAHOMA, FRED CAPSHAW, E. R. Hughes, and C. C. Childers, as Corporation Commissioners for the State of Oklahoma, and Fred Capshaw, E. R. Hughes, and C. C. Childers, Defendants

CERTIFICATE OF DISQUALIFICATION—Filed Sept. 24, 1930

Comes now Edgar S. Vaught, United States District Judge for the Western District of Oklahoma, and certifies his disqualification to participate in the hearing or hearings in the above entitled cause.

That some four or five years ago, he became the owner of a small amount of stock in a corporation, which has, within the last few months, purchased a valuable lease in the Oklahoma City field, which lease has a number of producing wells, and while technically this would not disqualify the said Judge, his participation might be misconstrued, and in order to avoid any basis for criticism or embarrassment, he certifies his disqualification.

The court has requested Honorable John H. Cotteral, United States Circuit Judge, Guthrie, Oklahoma, Hon. Franklin E. Kennamer, U. S. District Judge for the northern district and Hon. Robert L. Williams, U. S. District Judge for the eastern district of Oklahoma, to sit in this case, and they have indicated their acceptance and will compose the three judge court to hear all matters in connection with said case.

September 24th, 1930.

Edgar S. Vaught, District Judge.

[File endorsement omitted.]

[fol. 4] IN UNITED STATES DISTRICT COURT

DESIGNATION OF HON. ROBERT L. WILLIAMS—Filed Dec. 31, 1930

UNITED STATES OF AMERICA,
Tenth Circuit:

In my judgment the public interests require the designation and appointment of a Judge of this Circuit to hold and assist in holding the District Court of the United States for the Western District of Oklahoma, in place or in aid of the District Judge of that District;

I do, therefore, by these presents designate and appoint the Honorable Robert L. Williams, United States District Judge for the Eastern District of Oklahoma, to hold or assist in holding the District Court of the United States in and for the several divisions of the Western District of Oklahoma, at the times and places appointed by law for holding said court, from January 1, 1931, until December 31, 1931, inclusive, in place or in aid of the Honorable Edgar S. Vaught, United States District Judge for the said Western District of Oklahoma.

Robt. E. Lewis, Senior Circuit Judge.

[File endorsement omitted.]

[fol. 5] IN UNITED STATES DISTRICT COURT

DESIGNATION OF HON. FRANKLIN E. KENNAMER—Filed Dec. 31, 1930

UNITED STATES OF AMERICA,
Tenth Circuit:

In my judgment the public interests require the designation and appointment of a Judge of this Circuit to hold and assist in holding the District Court of the United States for the Western District of Oklahoma, in place or in aid of the District Judge of that District:

I do, therefore, by these presents designate and appoint the Honorable Franklin E. Kennamer, United States District Judge for the Northern District of Oklahoma, to hold

or assist in holding the District Court of the United States in and for the several divisions of the Western District of Oklahoma, at the times and places appointed by law for holding said court, from January 1, 1931, until December 31, 1931, inclusive, in place or in aid of the Honorable Edgar S. Vaught, United States District Judge for the said Western District of Oklahoma.

Witness my hand this 29th day of December, A. D. 1930.

Robt. E. Lewis, Senior Circuit Judge.

[File endorsement omitted.]

[fol. 6] IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

Equity. No. 1156

CHAMPLIN REFINING COMPANY, A CORPORATION, Plaintiff,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA and Fred Capshaw, E. R. Hughes, and C. C. Childers, Constituting the Corporation Commission of the State of Oklahoma, and Their Successors in Office, and Fred Capshaw, E. R. Hughes, and C. C. Childers, Defendants

SECOND AMENDED AND SUPPLEMENTAL BILL OF COMPLAINT FILED BY LEAVE OF COURT—Dec. 2, 1930

Comes now the Champlin Refining Company, a corporation, as plaintiff, and by leave of court files this its second amended and supplemental bill of complaint as an amendment to its original bill and amended and supplemental bill and as a substitute therefor, and herein alleges the following:

I

That it is a corporation organized and existing under and by virtue of the laws of the State of New Mexico and is a citizen of said state; that the defendants, Fred Capshaw, E. R. Hughes and C. C. Childers, and their successors in the office of Corporation Commissioners of the State of

Oklahoma, are citizens of the State of Oklahoma with their residence and domicile in the Western Federal Judicial District of the State of Oklahoma.

II

That it has complied with the Constitution and laws of the State of Oklahoma regulating the admission of foreign corporations to do business in the State of Oklahoma and is now and had been for a long time prior to the commence-
[fol. 7] ment of this suit doing business in the State of Oklahoma, with its principal office and place of business in the City of Enid, Garfield County, State of Oklahoma.

III

That the matter herein in controversy is in excess of $3,000.00 exclusive of interest and costs and arises under the Constitution and Laws of the United States.

IV

That the Corporation Commission of the State of Oklahoma is a Board created and vested with certain powers by Article 9 of the Constitution of the State of Oklahoma; that the defendants Fred Capshaw, E. R. Hughes and C. C. Childers are the duly elected, qualified and acting Corporation Commissioners of the State of Oklahoma and have comprised the Corporation Commission of said state during all the time mentioned in this bill.

V

That it is now and has been since its incorporation engaged in the business of producing and refining crude oil and transporting and marketing petroleum, natural gas and their products in interstate and intrastate commerce; that it owns and operates an oil refinery at Enid, Oklahoma, with a capacity of refining 15,000 barrels of crude oil per day; that said refinery plant refines and manufactures gasoline, kerosene, lubricating oils, waxes, greases and other by-products; that it owns approximately 735 tank cars which it uses in the distribution of its refined products among its customers in Oklahoma, Texas, Colorado, Kansas, Arkansas, Missouri, Minnesota, Iowa, Nebraska, South Dakota, North Dakota, Wisconsin, Michigan, Illinois, New

Mexico and California, and controls and operates approximately 470 miles of pipe line for the transportation of oil and gas in Oklahoma and other states and owns and operates approximately 263 retail gasoline filling stations and 256 wholesale gasoline stations in the States of Oklahoma, [fol. 8] Kansas, Texas, Iowa, Colorado, and Illinois, which it supplies from its Enid Refinery, all of which represent an investment of several million dollars.

VI

That it is the owner and holder of oil and gas leases now and at all times mentioned in this bill in full force and effect on

Lots 30 to 35 inclusive, and 50 and 51, in Block 2, Roosevelt Place Addition to Oklahoma City, Oklahoma, and Lots 23 to 26 inclusive, in Block 9, Armourdale Addition to Oklahoma City, Oklahoma, all in Oklahoma County, Oklahoma,

and in what is generally known as the "Oklahoma City Oil Field"; that it is also and has been at all times herein mentioned the owner of oil and gas mining leases on the

East Half of the South-east Quarter of the North-east Quarter of Section 14, Township 7 North, Range 6 East, and an undivided one-half interest in the South Half of the South-west Quarter of Section 9, Township 6, Range 6, all lying in Seminole County, State of Oklahoma,

and in what is generally known as the "Greater Seminole Oil Field."

And also is the owner of an oil and gas lease covering

The South-east Quarter of the South-east Quarter and the South Half of the North-east Quarter of the South-east Quarter of Section 25, Township 23, North of Range 4 West, Garfield County, Oklahoma,

on which there is a producing well which is surrounded by approximately 600 acres of oil and gas leases owned by this plaintiff, and near which well there are no other producing wells, nor are there any correlative lease-hold owners of the oil and gas rights in said pool from which said producing well obtains its production, and that there are no neigh-

boring oil and gas lessees whose lands are being drained by said well.

VII

That at an approximate cost of $270,000.00 it drilled [fol. 9] two producing wells on the above described lots in the Oklahoma City Oil Field, one of which, when it was completed in the month of August, 1930, showed a potential capacity of 9000 barrels of crude oil per day, and the other when brought in showed a potential production of 5000 barrels of crude oil per day.

VIII

That the words "potential capacity" or "potential production" as herein used and as used in the findings and orders of the Oklahoma Corporation Commission, hereinafter referred to, mean the production of oil from a well or given wells without restriction and/or without pinching them or restraining the natural flow or the maximum flow by pumping.

IX

That before any of the orders of the Corporation Commission herein complained of were made and promulgated it has drilled and equipped nine wells on the said leases in the Greater Seminole Field with a potential capacity of 450 barrels of crude oil per day at the time this suit was filed on September 15th, 1930, at an approximate cost of $569,000.00.

X

That it owns and operates other oil and gas leases on lands in other oil and gas fields in Oklahoma in addition to those above described, which are also affected by the orders of the Oklahoma Corporation Commission herein complained of, with a potential capacity of approximately 1200 barrels of crude oil per day.

XI

That the Oklahoma Legislature passed an Act approved February 11th, 1915, entitled "An Act defining and prohibiting the waste of crude oil or petroleum, providing for [fol. 10] the equitable taking of the same from the ground

and conferring authority on the Corporation Commission, prescribing the penalty for the violation of this Act, and declaring an emergency," whereby it was enacted, in the first section thereof, "That the production of crude oil or petroleum in the State of Oklahoma, in such manner and under such conditions as to constitute waste, is hereby prohibited"; that the second section of said Act prohibited "the taking of crude oil or petroleum from any oil-bearing sand or sands in the State of Oklahoma at a time when there is not a market demand therefor at the well at a price equivalent to the actual value of such crude oil or petroleum" and declared that the "actual value of such crude oil or petroleum at any time shall be the average value as near as may be ascertained in the United States at retail of the by-products of such crude oil or petroleum when refined less the cost and a reasonable profit in the business of transporting, refining and marketing the same" and vested the Corporation Commission "with the authority and power to investigate and determine from time to time the actual value of such crude oil or petroleum by the standard herein provided" and declared that "when so determined said Commission shall promulgate its findings by its orders duly made and recorded, and publish the same in some newspaper of general circulation in the State"; that the 3rd, 4th and 5th sections of said Act are as follows:

"Sec. 3. That the term 'waste' as used herein, in addition to its ordinary meaning, shall include economic waste, underground waste, surface waste and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands. The Corporation Commission shall have authority to make rules and regulations for the prevention of such wastes, and for the protection of all fresh water strata, and oil and gas bearing strata, encountered in any well drilled for oil.

[fol. 11] "Sec. 4. That whenever the full production from any common source of supply of crude oil or petroleum in this State, can only be obtained under conditions constituting waste, as herein defined, then any person, firm or corporation, having the right to drill into and produce oil

from any such common source of supply, may take therefrom only such proportion of all crude oil and petroleum that may be produced therefrom, without waste, as the production of the well or wells of any such person, firm or corporation, bears to the total production of such common source of supply. The Corporation Commission is authorized to so regulate the taking of crude oil or petroleum from any or all such common sources of supply, within the State of Oklahoma, as to prevent the inequitable or unfair taking, from a common source of supply of such crude oil or petroleum, by any person, firm, or corporation, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another.

"Sec. 5. That for the purpose of determining such production, a gauge of each well shall be taken under rules and regulations to be prescribed by the Corporation Commission, and said Commission is authorized and directed to make and promulgate, by proper order, such other rules and regulations, and to employ or appoint such agents with the consent of the Governor, as may be necessary to enforce this act."

that the 6th section provides for a hearing before the Corporation Commission, and the 7th section confers upon the Supreme Court of the State "appellate jurisdiction" to "review the action of said Commission in making any order, or orders, under this Act," and authorizes an appeal "by any person, firm or corporation, shown by the record to be interested therein" and directs that "orders so appealed from shall not be superseded by the mere fact of such appeal being taken, but shall be and remain in full [fol. 12] force and effect until legally suspended or set aside by the Supreme Court."

Sections 8 and 9 are as follows:

"Sec. 8. That in addition to any penalty that may be imposed by the Corporation Commission for contempt, any person, firm or corporation, or any officer, agent or employee thereof, directly or indirectly violating the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof, in a court of competent jurisdiction, shall be punished by a fine in any sum not to exceed five thousand dollars ($5,000.00), or by an imprisonment

in the county jail not to exceed thirty (30) days, or by both fine and imprisonment.

"Sec. 9. That in addition to any penalty imposed under the preceding section, any person, firm or corporation, violating the provisions of this act, shall be subject to have his or its producing property placed in the hands of a receiver by a court of competent jurisdiction, at the suit of the State through the Attorney General or any county attorney, but such receivership shall only extend to the operating of producing wells and the marketing of the production thereof, under the provisions of this act."

Section 10 provides "That the invalidity of any section, subdivision, clause or sentence of this act shall not in any manner effect the validity of the remaining portion thereof."

XII

That the above Act approved February 11th, 1915, is embodied in Sections 7954 to 7963, inclusive, Oklahoma C. L. 1921, and will hereinafter be referred to as the "Oil Conservation Act" or "Conservation Act."

XIII

That the Oklahoma Legislature at its 1907-8 session [fol. 13] (see Section 3498, O. C. L. 1921) passed an act empowering the Corporation Commission to impose a fine upon "any corporation, person or firm" violating "any of its rules or requirements" and made "each day's continuance of such violation, after due service upon such corporation, person or firm, of the order or requirement of the commission" a separate offense, with the provision "that should the operation of such order or requirement be suspended, pending an appeal therefrom, the period of such suspension shall not be computed."

XIV

That assuming that said "Oil Conservation Act" is valid and constitutional legislation and that it vested them with authority to do so, the defendants Fred Capshaw, E. R. Hughes and C. C. Childers, as Corporation Commissioners of the State of Oklahoma, and acting as such Commission,

made and entered on June 30th, 1930, an order, No. 5189, in Corporation Commission cause No. 10146, the effect of which, if valid, was to restrict and curtail the production of crude oil in the Oklahoma City Oil Field, Greater Seminole Oil Field, and several other oil fields in the State of Oklahoma in which plaintiff owned and operated and now owns and operates the oil and gas wells heretofore referred to and other oil and gas wells, a copy of which order is hereto attached and made a part hereof as Exhibit "A"; and that in paragraph "F" of the findings of fact in said order the Commission found as a fact, without any evidence before it, that "the potential production of crude oil from existing wells in Oklahoma on and following the first day of July, 1930, will be approximately 1,362,000 barrels per day, and that the daily demand from Oklahoma is and will be approximately 650,000 barrels per day during the months of July, August and September 1930," and "that, therefore, there is an excess of potential production over consumption of 712,000 barrels per day which cannot be produced without waste as defined by the Statutes of Okla- [fol. 14] homa," and that "if no restraint were placed upon producing wells * * * or upon wells hereafter drilled during the months of July, August and September, the potential production of the State of Oklahoma would be much greater than 1,362,000 barrels per day and would exceed all transportation and marketing facilities and reasonable market demands to such an extent as to force large quantities of oil into earthen storage in this state and otherwise cause waste of a character prohibited by the laws of the State of Oklahoma," and that "In order to prevent such waste, the Commission finds that it is necessary to curtail the production from the pools" described in the petition "during the said months of July, August and September, 1930," according to a schedule therein set forth by which the Oklahoma City Field was restricted to a production of 130,037 barrels per day out of a 600,000 barrel per day potential; that by the decretal part of the said order the oil production was limited to an average of 650,000 barrels per day during July, August and September, and the Oklahoma City Field was not allowed to produce a maximum of more than 25 per cent of its potential production; that the Greater Seminole Field was limited to two-thirds of its

potential production during said months, the East Earlsboro and South Earlsboro pools were limited to one-third of their potential production, and three other designated pools limited to one-fourth of their potential production during said months, and the Commission by its said order expressly retained jurisdiction to make supplementary and ancillary orders from time to time as required by new developments "and as instructions to the Umpire and Operators' Committee and authorized the umpire and Operators' Committee" to report the facts to support any supplemental or ancillary order.

XV

That assuming that said "Oil Conservation Act" is [fol. 15] valid and constitutional legislation and that it vested them with authority to do so, the defendants, Fred Capshaw, E. R. Hughes and C. C. Childers, as Corporation Commissioners of the State of Oklahoma, and acting as such Commission, made and entered on August 30th, 1930, an order, No. 5292, in Corporation Commission cause No. 10146, the effect of which, if valid, was to further restrict and curtail the production of crude oil in the Oklahoma City Field, the Greater Seminole Oil Field, and other oil fields in Oklahoma in which the plaintiff then owned and now owns and operates oil producing wells, a copy of which order is hereto attached and made a part hereof as Exhibit "B"; that in said order the Commission found as a fact that the potential production of crude oil in Oklahoma had then increased to 1,481,118 barrels per day and that the reasonable market demand had decreased from 650,000 barrels to 550,000 barrels per day since June 30th, and that it was necessary to further curtail the output of crude petroleum in Oklahoma; found that the potential production in the Oklahoma City field was 700,000 barrels per day and curtailed the production of crude oil in that field from 130,037 barrels per day to 88,903 barrels per day, and in said order prohibited the production of oil in the Greater Seminole Field in excess of 50 per cent of the potential production, cut the production in some fields to one-fourth of the potential and the Oklahoma City field to 18¾ths per cent of its potential during the month of September, but did not undertake to curtail the production in smaller fields

having a production of 260,000 barrels per day, and in said order retained jurisdiction to make supplemental and ancillary orders from time to time as required by new developments and as recommended by the Umpire and Operators' Committee upon their report of facts showing the necessity thereof, and thereby modified its former order shown by Exhibit "A" hereto attached.

[fol. 16] XVI.

That the defendants, acting as the Corporation Commission of Oklahoma, made, entered and promulgated said orders shown by Exhibits "A" and "B" hereto attached without having heard the testimony of any witness under oath and without having heard and considered any sort of legal evidence upon which to base either of said orders; that without any legal evidence of any sort before it said defendants, acting as the Corporation Commission of Oklahoma, did on September 30th, 1930, make and enter Order No. 5337 in said Corporation Commission Cause No. 10146, extending orders Nos. 5189 and 5292 in full force and effect until and including October 10th, 1930, as shown by Exhibit "C" attached hereto.

XVII

That assuming that said "Oil Conservation Act" is valid and constitutional legislation and that it vested them with authority to do so, the defendants Fred Capshaw, E. R. Hughes and C. C. Childers, as Corporation Commissioners of the State of Oklahoma, and acting as such Commission, made and entered on October 28th, 1930, an order, No. 5369, in Corporation Commission cause No. 10146, the effect of which, if valid, was to further restrict and curtail the production of crude oil in wells producing over 5 barrels per day in all fields in the State of Oklahoma, including the Oklahoma City and Greater Seminole Fields, a copy of which order is hereto attached and made a part hereof as Exhibit "D"; that in said order defendants found "that the potential daily production of crude oil from the wells in Oklahoma during the month of October, 1930, is and will be approximately 3,638,478 barrels and that during the months of November and December, 1930, the said potential daily production will be 4,142,872 barrels

and 4,244,294 barrels respectively, and that the daily demand for crude oil from Oklahoma is and will be approximately 550,000 barrels in October, 545,000 barrels in [fol. 17] November, and 535,000 barrels in December 1930"; that said order contained a "pro-ration schedule" for the period between October 1st and December 21st, 1930, in which it is found and ordered that the Oklahoma City Field for October had a potential production of 2,200,000 barrels, of which amount it was restricted to a daily production of 131,095 barrels, for November a potential production of 3,319,000 barrels with production restricted to 134,589 barrels per day, and for December a potential daily production of 3,446,000 barrels with an allowed production per day of 131,003 barrels; that jurisdiction over the cause was expressly retained by the Commission.

XVIII

That in its order of June 30th, 1930, shown by Exhibit "A" hereto, Ray M. Collins was appointed by the Oklahoma Corporation Commission as its umpire and agent "to enforce the rules and regulations" therein made, and was authorized to employ assistants to aid him in administering the rules and regulations; that said Ray M. Collins is now and has been for many months prior hereto the umpire for the defendants, purporting to act as the agent and representative of the Corporation Commission of Oklahoma, whereas in fact said Collins is not now and never has been a legal agent of the Corporation Commission and is not now and never has been an officer of the State of Oklahoma with any authority to act in respect to the matters covered by the said Act of the Legislature approved February 11th, 1915, or the rules and regulations made thereunder by the Corporation Commission; that in its said order No. 5369, shown by Exhibit "D" hereto attached, the defendants again appointed Ray M. Collins as "Umpire and Agent of the Commission to enforce the rules and regulations herein made and he is hereby authorized to employ as many assistants as he shall deem necessary"; that as a fact said Ray M. Collins is now and has been at all times while acting under purported authority from the [fol. 18] Corporation Commission of Oklahoma the paid employee and representative of numerous persons, firms

and corporations producing oil in the various Oklahoma fields and engaged in the manufacture of refined products and marketing the same in competition with complainant; that said Ray M. Collins, for his services in acting as the appointed agent and umpire of the Corporation Commission, is now and has been receiving a monthly salary at the rate of $24,000.00 per year from various firms, persons and corporations engaged in the production of crude oil in Oklahoma and the refining of crude oil in competition with complainant; that said Collins has neither been paid nor promised by the State of Oklahoma or any political subdivision thereof any compensation for his services as alleged umpire and agent of the said Commission; that said Collins has at all times acted in conjunction with and in the service of a so-called Operators' Committee composed of various individuals producing oil in Oklahoma and representatives of firms and corporations producing crude oil in Oklahoma fields and manufacturing the refined products therefrom and marketing the same.

XIX

That the Commission's order No. 5189, made on June 30th, 1930, provides that:

"The gauge to determine potential shall be taken by each operator in the pool in respect of the lease or leases owned by him therein and then producing, such gauge to be taken between the hours of seven A. M. on the day set by the umpire and seven A. M. on the following day. Prior to the taking of such gauge and in respect of each producing lease covered hereby, the umpire shall appoint a representative of an operator owning a lease adjoining the particular property to be gauged, and shall notify the operator whose property is to be guaged of the name of the rep- [fol. 19] resentative, such notification to be given prior to the taking of such gauge. It shall be the positive duty of such representative to remain on the lease that is being gauged throughout the entire day that the gauge is being taken to witness the gauging of the production therefrom; and immediately upon the completion of such gauge, such witness and the operator whose property was gauged shall file a written statement with the umpire showing the production of said lease, and of each well thereon for the day

said gauge is taken. The production so shown shall constitute the potential for said lease until the next gauge is taken."

That in its said order No. 5369, made on October 28th, 1930, it is provided that:

"The gauge to determine potential shall be taken by each operator in the pool in respect of the lease or leases owned by him therein and then producing, such gauge to be taken between the hours of seven A. M. on the day set by the order of the Commission, and seven A. M. on the following day. Prior to the taking of such gauge and in respect of each producing lease covered hereby the umpire shall appoint a representative of an operator owning a lease adjoining the particular property to be gauged, and shall notify the operator whose property is to be gauged of the name of the representative, such notification to be given prior to the taking of such gauge. It shall be the positive duty of such representative to remain on the lease that is being gauged throughout the entire day that the gauge is being taken to witness the gauging of the production therefrom; and immediately upon the completion of such gauge, such witness and the operator whose property was gauged shall file a written statement with the umpire showing the production of said lease, and of each well thereon for the day said gauge is taken. The production [fol. 20] so shown shall constitute the potential for said lease until the next gauge is taken."

XX

That the oil wells in the Oklahoma City Field have never been gauged by the Oklahoma Corporation Commission or by any competent and legally qualified agent of said Commission or legal and qualified officer of the State of Oklahoma; that the Commission's findings of the potential production in the Oklahoma City field, set forth in the various orders hereto attached as exhibits, were not based upon any gauge of the wells in said field; that the Commission's findings of the potential production in the Seminole Field and other fields, set forth in said orders, were not based upon any gauge of the wells in said respective fields; that no legal and lawful gauge as provided by the Oklahoma

statutes has ever been made by said corporation Commission or under any valid rules prescribed by said Commission; that the Governor of the State of Oklahoma has never consented to the employment or appointment of agents to make the gauge, as required by Section 7958, O. C. L. 1921.

XXI

That various persons, firms and corporations owning and operating oil wells in the Oklahoma City Field, Greater Seminole Field, and some of the other fields, organized what is known and referred to in the Commission's rules, regulations and orders herein complained of as an "Operators' Committee"; that said Operators' Committee is composed of plaintiff's competitors; that said Operators' Committee procured the Corporation Commission to name one of their employees, Otto B. Bradford, as a so-called umpire for the Oklahoma City Oil Field; that acting under the directions of the Operators' Committee, approved by the Corporation Commission, it was the business of Otto B. Bradford, as alleged umpire, to see that the producers of oil in the Oklahoma City Field kept their wells closed down under what is known as a time proration basis and produc- [fol. 21] tion allowed upon an unfounded and unwarranted estimation of the potential production of the Oklahoma City Field, and no gauge was ever made on wells in the Oklahoma City Field, as required by the statute; that said Otto B. Bradford is not and never has been an agent or representative of the State of Oklahoma or a political subdivision thereof; that he has neither received nor been promised by the State of Oklahoma or any authorized agent of the State of Oklahoma or political subdivision thereof, any compensation for his services as alleged umpire; that said Bradford has been receiving from the Operators' Committee compensation for his services and all his acts and deeds have been illegal and unauthorized by any valid rule and regulation of the Commission or by the provisions of any statute of the state.

XXII

That neither the Conservation Act nor the rules, regulations and orders of the Corporation Commission requires nor provides or provided for notice of time and place to

plaintiff or to any other operators in the Oklahoma field of a pretended gauge or any effort to gauge the wells of the other operators; that no provision is made in said Conservation Act nor in the rules and regulations of the Commission for notice to the owners of oil wells in the Seminole Field that at a certain time and place a gauge will be made of the production of oil in wells in the Oklahoma City Field and no provision is made by said Conservation Act or the Commission's rules and regulations for notice to the plaintiff of the time and place of any gauge of the oil produced from wells in the Oklahoma City Field other than wells on its own leases or wells on leases or lands adjoining its leases in the Oklahoma City Field; that it never received any notice of the time and place of gauging the production of oil from wells of other operators in the Oklahoma City Field, or in the Seminole Field, or the East or South Earls-[fol. 22] boro Fields, or in other fields described in the Commission's rules and regulations, subjecting them to its proration orders; that although the Commission's orders, rules and regulations herein complained of condition plaintiff's right to produce the full capacity of its wells upon the potential production of the wells of other owners in the Oklahoma City Field, Greater Seminole Field, and other prorated fields, neither the Conservation Act nor the rules and regulations of the Commission provide for any notice to plaintiff or to any other operator of the time and place of making gauges to determine the potential production, and no notice having been provided for by said Conservation Act or the Commission's rules and regulations, and no notice of any intended gauge having been served upon it, the rules, regulations and orders of the Commission herein complained of are each and all void in that they deny plaintiff due process of law guaranteed to it by the Fourteenth Amendment to the Constitution of the United States; that the Commission's rules and regulations providing for a gauge of the wells undertakes to vest final and conclusive authority in the various and sundry owners of oil wells in said Oklahoma fields to determine, in the presence and with the consent of an adjoining operator, the amount of the potential production of the well gauged, and in undertaking

to vest private owners with that authority the rules constitute an unconstitutional interference with the plaintiff's use of its property, deny plaintiff due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States, and likewise deny it equal protection of the law guaranteed by said amendment.

XXIII

That it now has and has had at all times and will continue to have facilities for the transportation of its crude oil from its said leases in the Oklahoma City field, Greater Seminole Field, and other field to its Enid refinery and a [fol. 23] market for its refined products; that neither it nor any other operator in the Oklahoma City Field has produced and stored crude oil in earthen tankage or permitted it to run at large on the surface of the earth; that it is not now and has not at any time wasted any of the oil produced by it from its leases in said fields and that all the oil it can produce will be utilized for commercial purposes; that its oil wells are now and have been since completion equipped in the most modern and efficient manner for the production of oil; that the closing in or pinching in of plaintiff's wells in said Oklahoma City Field will cause water to enter the oil and gas sand, greatly damage said wells and result in material waste of oil and gas to its irreparable damage.

XXIV

That said Commission's rules, regulations and orders herein complained of are arbitrary and discriminatory in that they allow oil producers in certain sections of the state to produce their wells to 100 per cent of their capacity, whereas the producers in other areas are restricted to much lower percentages and the producers in the Oklahoma City Field are restricted below 2.78 per cent of the capacity of their wells; that it has been required and compelled by defendants to shut entirely in its wells in the Oklahoma City Field and limit its production from its Greater Seminole Field wells to a minimum, thus compelling it to purchase oil from other producers in order to run its refinery although it has sufficient production of its own to keep its refinery running at full capacity; that it can produce oil from its

wells in the Oklahoma City and Greater Seminole fields and other fields for a less cost than the price it is now and will be compelled to pay for crude oil from other producers on the open market; that said rules, regulations and orders thereby deny it due process of law and equal protection of the laws guaranteed by the Fourteenth Amendment to [fol. 24] the Constitution of the United States; that under present conditions and conditions existing for several months prior hereto it has been compelled to run its refinery at a loss, whereas if it is allowed to produce and refine its own production in said Oklahoma fields it can run its refinery at a profit or at least without a loss; that its refinery is equipped with the most modern and efficient stills, machinery and apparatus for the refining of crude oil into gasoline and other by-products.

That the rules, regulations and orders of said Commission, as hereinbefore set forth, are unconstitutional and void in that said orders as entered have the effect of confiscating the property of this plaintiff and for the further reason that they are in contravention of the provisions of Section 2 of Article 2 of the Constitution of Oklahoma, which is as follows:

"All persons have the inherent right to life, liberty, and pursuit of happiness and enjoyment of the gains of their own industry,"

in that this plaintiff has rendered its property highly valuable by its own industry, and it is capable of taking therefrom without waste, oil in large quantities as herein otherwise set out of which it is now deprived by said orders.

XXV

That said rules, regulations and orders of the Commission prohibiting pipelines from running and purchasers from buying more oil from any producer than allowed by the rules, regulations and orders are void for the want of any authority to prescribe them and are intended to and actually have the effect of coercing purchasers and pipe lines into submission thereto and thereby depriving plaintiff of the means of transporting its oil.

XXVI

That many large oil corporations, firms and individuals selfishly interested in maintaining high prices for crude oil [fol. 25] formed by agreement among themselves what is known in the rules and regulations of the Commission as an "Operators' Committee" and through Ray M. Collins said operators, competitors of the plaintiff, formulated their so-called proration orders herein complained of and submitted them to the Corporation Commission for approval; that the Commission approved and adopted said suggested rules, regulations and proration orders without sufficient appropriate or competent evidence, legally or properly to justify the entry of said orders; that said major oil companies, competitors of plaintiff, entered into an agreement, combination and confederation among themselves to limit the natural output of wells in the Oklahoma City Field, Greater Seminole Field, and other fields in Oklahoma and the United States, and thereby restrict production for the purpose of controlling the price of crude oil and its refined products and eliminating thereby plaintiff and others in its class as competitors, and said agreements were and are in restraint of trade and commerce among the several states and in violation of the anti-trust laws of the United States and the State of Oklahoma, and proration orders of the Corporation Commission are a violation of Section Eight of Article One of the Constitution of the United States.

XXVII

That C. C. Julian Oil and Royalties Company, a corporation, did on August 28th, 1930, file a petition in the Supreme Court of the State of Oklahoma wherein it alleged that it was the owner of oil and gas leases in the Oklahoma oil fields and had at that time and for some time prior thereto producing oil wells on its leases in said field and on other and additional allegations prayed the court to issue a writ of prohibition directed to the defendants and the Corporation Commission of the State of Oklahoma restraining it from enforcing its rules, regulations and proration orders set forth in Exhibit "A" to this bill; that the [fol. 26] Supreme Court issued a temporary writ of prohi-

bition but on motion of the Attorney General of the State vacated the temporary writ, retaining however jurisdiction of the petition for the writ for decision on its merits; that thereafter and on October 14th, 1930, the court decided the cause and entered a judgment dismissing the petition for the writ of prohibition, holding thereby that the Conservation Act of the Legislature conferred jurisdiction and authority upon the Corporation Commission to do the things complained of by the petitioner in that case; that counsel for this plaintiff appeared before the Supreme Court in the C. C. Julian Oil and Royalties Company case for writ of prohibition and filed a brief as amicus curiæ; that the Supreme Court filed a written opinion upholding the jurisdiction of the Corporation Commission to make the proration order of June 30th, 1930, and to that opinion reference is here made.

XXVIII

Plaintiff further alleges that the oil Conservation Act and the separate sections thereof are unconstitutional and void for the following reasons and under the provisions of the Fourteenth Amendment to the Constitution of the United States, in that:

(a) Said Act deprives plaintiff of the use of its property.

(b) Said Act deprives the plaintiff of the equal protection of the laws.

(c) Said Act denies the plaintiff due process of law.

(d) Said Act undertakes to control and fix prices at which plaintiff must sell or purchase crude oil.

(e) The provisions of said Act are too vague and uncertain intelligently to forewarn the plaintiff and others in its class of the rule or law it must abide by in the conduct of its business.

[fol. 27] (f) That said Act is void for uncertainty and vagueness in that it does not define what is meant by (1) "Economic waste"; (2) "waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demand"; (3) "inequitable or unfair taking from a common source of

supply"; (4) "unreasonable discrimination in favor of any one such common source of supply as against another."

(g) Said Act is an arbitrary and unreasonable limitation on the right of plaintiff and others in its class to produce oil from its own private property and market the same at whatever price it chooses to accept therefor.

(h) Said Act undertakes to limit and confine plaintiff to a taking of crude oil from the ground except in such manner and on such terms as the Corporation Commission of the State of Oklahoma deems in advance of the taking is equitable and fair.

(i) Said Act limits the plaintiff in the taking of crude oil from its wells to an amount based on the ratio and proportion of the potential production of its wells to the potential production of all the wells in the so-called common source without in any way first defining the limitations and boundaries of the common source.

(j) Said Act does not define the manner in which the extent of such common source of supply shall be ascertained or designated.

XXIX

That said Conservation Act is void in that it violates Section 1 of Article 4 of the Oklahoma Constitution in that it attempts to delegate to the Corporation Commission power and authority to prescribe by legislative rule the future conduct of operators of oil and gas wells in Oklahoma by preventing each from taking from a common underground reservoir of crude oil an inequitable and unfair proportion thereof; that it further violates Section [fol. 28] 1 of Article 4 of the Constitution in that it confers and delegates legislative, executive and judicial authority upon the Corporation Commission.

XXX

That it is void in that it violates Section 1 of Article 5 of the Oklahoma Constitution which confines all the legislative authority of the State of Oklahoma to the Legislature consisting of a Senate and House of Representatives, reserving to the people only "the power to propose laws

and amendments to the Constitution and to enact or reject the same at the polls independent of the Legislature" and also reserving "power at their own option to approve or reject at the polls any Act of the Legislature."

XXXI

That the Commission's rules, regulations and orders herein complained of being based upon the findings of fact therein recited, are void in that they were made and are maintained with threats of their enforcement in excess of the Commission's authority and powers either granted by the Constitution of Oklahoma or any statute of the state; that said rules, regulations and orders of the Commission are void in that they undertake to regulate, control and unreasonably hamper plaintiff's business of refining oil and marketing the refined products therefrom in violation of Plaintiff's rights guaranteed by the Fourteenth Amendment to the Constitution of the United States.

XXXII

That the defendants Capshaw, Hughes and Childers, as Corporation Commissioners of the State of Oklahoma and acting as said Commission, are threatening to continue to make and enforce from time to time for an indefinite period its present rules, regulations and orders, thereby depriving plaintiff of its rights guaranteed by the Fourteenth Amend- [fol. 29] ment to the Constitution of the United States; that the aforesaid defendants acting as the Corporation Commission of the State of Oklahoma, intend to and will make said rules, regulations and orders for a brief period of time and then shortly before the expiration thereof continue them, all for the purpose of preventing this plaintiff from presenting to this court and to the Supreme Court of the United States the issue of the validity of said rules, regulations and orders and their constitutionality and the constitutionality of the Oklahoma Oil Conservation Act; that this course of conduct has been maintained by the aforesaid defendants from month to month from June 1930 and will hereafter be continued from month to month or for brief periods for the purpose of coercing this plaintiff and others similarly situated into an acceptance and acquiescence in their orders, rules and regulations and with

the hope that this suit or any other action commenced in the Federal Court will become moot before a trial and decision can be had; that plaintiff has produced oil from its Oklahoma City Oil field wells in violation of said orders, rules and regulations and that the aforesaid defendants, acting as the Corporation Commission, have cited plaintiff to appear before them as such Corporation Commission to show cause why it should not be punished for contempt and visited with the penalties prescribed by the statutes; that the penalties prescribed by the Oklahoma Statutes herein pointed out for violation of the orders of the Corporation Commission are excessive and unreasonable and imposed by the statutes for the purpose of deterring anyone injured or affected by the orders of the Corporation Commission from contesting their validity or correctness in any judicial forum; that the penalties prescribed by the Oklahoma Statutes for a violation of the Corporation Commission's orders beset judicial review with such deterrents as to deny plaintiff due process of law; that the penalties prescribed by the Oklahoma Statutes are so far confiscatory as to operate, as they were intended by the Legisla- [fol. 30] ture, to coerce plaintiff and any other person, firm or corporation, into acquiescing therein and thereby forego and surrender the right to have their orders reviewed by the courts; that without regard to the validity of the orders, rules and regulations herein complained of plaintiff is entitled to an injunction from this court restraining the enforcement of the penalties prescribed by the said Oklahoma Statutes; that the aforesaid defendants, acting as Corporation Commissioners of the State of Oklahoma and as such Commission are threatening to punish this plaintiff and iipose upon it the penalties prescribed by statute, including a receivership for its properties; that unless restrained by writs and orders from this court the aforesaid defendants will continue to enforce the rules, regulations and orders herein complained of and continue to deprive plaintiff of its rights guaranteed by the Courteenth Amendment to the Constitution of the United States.

XXXIII

That since the filing of the original bill in this cause plaintiff did on November 7th, 1930, file with the Corpora-

tion Commission of the State of Oklahoma its written special appearance and motion to vacate its rules, regulations and orders herein complained of, in which motion it stated that this suit was commenced in this court "about September 15th, 1930, for the purpose of restraining and enjoining the enforcement of said rules, regulations and orders herein complained of" and further set forth substantially all the facts and allegations herein contained, and prayed "that the said proration order of October 28th, 1930, in cause No. 10326, and all other prior proration orders affecting this movant, be set aside and annulled at lease insofar as movant is concerned; if this relief will not be granted then movant prays that the Commission enter an order suspending the application of the penalty provisions of the statute during the pendency of its action in equity in the United States Court for the Western District of Okla- [fol. 31] homa wherein it seeks to restrain and enjoin this Commission from enforcing said proration orders"; that said motion to vacate was set for hearing before the Commission on November 20th, 1930. at the offices of the Commission in the Capitol Building at Oklahoma City, Oklahoma; that on said date plaintiff appeared with its counsel and witnesses and those operators opposed to the motion appeared through their representatives and counsel, whereupon evidence was introduced and heard and on the morning of November 21st, 1930, the Commission denied plaintiff's said motion to vacate and entered an order denying plaintiff's motion to vacate and its motion to stay or suspend the enforcement of the orders, rules and regulations herein complained of pending a trial and final decision of this case in this court.

XXXIV

That the Corporation Commission of the State of Oklahoma is the only tribunal provided by the laws of said state endowed with final legislative authority on the subjects herein complained of; that the Oklahoma Supreme Court on appeal from said rules, regulations and orders herein complained of, has no authority to review said orders, rules and regulations and substitute therefor its own orders, rules and regulations, said court being confined exclusively to the determination of any and all judicial questions arising in respect to the validity and enforcement of said rules,

regulations and orders; that plaintiff has no adequate remedy at law and is therefore entitled to relief in equity.

Prayer

Wherefore plaintiff prays (1) that this court enter a temporary restraining order restraining defendants from enforcing said Oil Conservation Act and likewise from enforcing its said orders, rules and regulations herein complained of and that a temporary injunction be granted by [fol. 32] a three-judge court as provided by Section 266 of the Federal Judicial Code; (2) that said Oil Conservation Act be declared unconstitutional and void; (3) that if the relief prayed for in the second paragraph of this prayer can not be granted, then that this court adjudge that the rules, regulations and orders of the Commission herein complained of unconstitutional and void; (4) that the defendants, and each of them, and their successors in office, their agents, servants, employees and successors, and all persons acting under or through them, be temporarily and then permanently enjoined from in any way or manner, by reason of the apparent force of said orders, enforcing said purported orders, rules and regulations, or any part thereof, against this plaintiff, and enjoined temporarily and permanently from making, promulgating and enforcing any similar rules, regulations and orders; (5) that the statutes of Oklahoma prescribing the penalties for the violation of the rules, regulations and orders of the Corporation Commission be adjudged unconstitutional in that they deprive the plaintiff of due process of law, and that the defendants be temporarily and permanently enjoined from imposing upon this plaintiff any of the statutory penalties for the violation of said orders, rules and regulations; (6) that plaintiff have all such other, further and general relief as it may be entitled to under the premises and the facts.

Horace G. McKeever, Harry O. Glasser, A. K. Swann, Nathan Scarritt, Edgar S. deMeules, Geo. S. Ramsey, Counsel for Plaintiff. Ramsey, deMeules, Martin & Logan, Tulsa, Okla.; McKeever, Elam & Stewart, Enid, Okla., of Counsel.

[fol. 33] *Duly sworn to by H. H. Champlin. Jurat omitted in printing.*

[fol. 34] EXHIBIT "A"

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause No. 10146. Order No. 5189

In the Matter of the Application of WIRT FRANKLIN for Rules and Regulations to be Established by the Commission to Prevent the Waste of Petroleum in the Oklahoma City, East Earlsboro, South Earlsboro, Marshall-Lovell, Allen Dome, Sasakwa, Konawa, St. Louis, West Asher-Wanette, Chandler, West Perry, Orlando, and Township 20 North, Range 4 West, and All Pools in the Greater Seminole Area as Shown by the Map Attached to the Petition Herein, and All Other Producing Areas That May Come into Production During the Months of July, August, and September, 1930, All in the State of Oklahoma

Comes now Wirt Franklin, petitioner herein, by his counsel, and this matter being set for hearing on this day, and the Commission having heard and considered the evidence of the petitioner, and the evidence of any and all persons opposing said petition, and being advised in the premises, finds as follows:

(a) That the lands covered by this application which will be subject to the rules and regulations established by this Order are those described in "Exhibit B" attached to the petition filed herein, and, specifically, the following pools: Oklahoma City, East Earlsboro, South Earlsboro, Marshall-Lovell, Allen Dome, Sasakwa, Konawa, St. Louis, West Asher-Wanette, Chandler, West Perry, Orlando and Township 20, Range 4 West, and all pools in the Greater Seminole Area, and such new pools and sands as may be brought into production during July, August, and September, 1930.

(b) That notice by publication on all persons or classes interested in this proceeding and in the rules and regulations to be established hereby has been given, as required by law, in a newspaper of general circulation in this State, and that, in addition reasonable notice in writing has been served personally on all persons, firms and corporations

complained against in this proceeding and due proof of service of notice has been made and filed herein.

(c) The Corporation Commission finds from the evidence that there is an overproduction of crude oil in the State of Oklahoma attended by waste of gas and of gas pressure and that the producers of crude oil in the oil pools described in the Petition herein are threatening to and will, unless restrained by the rules and regulations of the Corporation Commission, commit physical waste of crude oil, economic waste, underground waste, surface waste and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands, and that the commission of such waste is so imminent in each of the areas involved in this proceeding that the orders, rules and regulations prayed for in the Petition herein are necessary in order to prevent such waste.

[fol. 35] The Commission further finds that there is a general overproduction and importation of crude and refined petroleum in the United States, and that this fact tends to reduce the amount of crude oil that can be produced in the State of Oklahoma without waste; that the potential production of crude oil in the United States is at this time approximately 4,730,000 barrels per day, and imports of crude and refined petroleum aggregate about 300,000 barrels per day, thus creating a total possible current supply of 5,030,000 barrels per day as against an approximate daily demand for domestic use and export of 2,840,000 barrels per day. That by reason of this great oversupply and threatened waste, potential production is now being curtailed in Oklahoma and other producing regions, and unless there is a continuance of curtailment of production in the areas involved herein, the conservation measures now in effect in the other oil producing states may be abandoned, thus causing large quantities of petroleum to be produced in such other states in excess of their local demand and forced upon the market to the demoralization of the industry and a consequent reduction in demand for crude oil from Oklahoma, with a corresponding increase in waste in this State and an undue exhaustion of our oil resources. The Commission finds that this petroleum situation con-

stitutes a great state emergency and that the laws of the State of Oklahoma and the powers of the Corporation Commission should be availed of to remove the same.

(d) The Commission further finds from the evidence that, in addition to the excess of potential and actual production and imports over current demand, there are stocks of petroleum on hand in the United States aggregating more than 698,000,000 barrels, which stocks are excessive and beyond the needs of the petroleum industry. That by reason of the excessive supply thus indicated the purchasers of crude oil in Oklahoma are unwilling to purchase crude oil in Oklahoma for storage purposes in any amount that would be adequate to take care of the surplus of potential production over current demand and that, therefore, there is not sufficient empty tankage available to take care of said excess and unless potential production in Oklahoma is curtailed, much oil would necessarily go to earthen storage where it would evaporate and thus be wasted. The Commission further finds that the storage of oil in Oklahoma under existing conditions would involve waste for the further reason that there is already an excess of stored oil locally, and, there being an oversupply, oil now stored would have to remain in storage for a great length of time and would deteriorate.

(e) The Commission finds from the evidence that in order to curtail the production of crude oil in Oklahoma in a manner to prevent the commission of waste it will be necessary to enforce proportionality of taking from the wells and leases in the flush and semi-flush areas described in the Petition, and that unless such proportionality is required, injustice would be done as between producers in the same pool and as between different pools in that drainage would occur from one lease to another, an undue proportion of the gas pressure would be utilized by some operators to the detriment of others and unfair discrimination would arise as between pools.

(f) The Commission further finds that the potential production of crude oil from existing wells in Oklahoma on and following the first day of July, 1930, will be approximately 1,362,000 barrels per day, and that the daily demand

from Oklahoma is and will be approximately 650,000 barrels per day during the months of July, August, and September, 1930. That, therefore, there is an excess of potential production over consumption of 712,000 barrels per day which cannot be produced without waste as defined by the Statutes of Oklahoma.

[fol. 36] The Commission further finds that the above mentioned potential production is only that from the wells which would be permitted to produce under existing orders of this Commission and does not include wells which by said order are required to remain shut-in for the length of time therein prescribed; that if no restraint were placed upon producing wells or wells now completed or upon wells hereafter drilled during the months of July, August and September, the potential production of the State of Oklahoma would be much greater than 1,362,000 barrels per day and would exceed all transportation and marketing facilities and reasonable market demands to such an extent as to force large quantities of oil into earthen storage in this State and otherwise cause waste of a character prohibited by the laws of the State of Oklahoma. In order to prevent such waste, the Commission finds that it is necessary to curtail the production from the pools in the Petition described and each of them during the said months of July, August and September, 1930, and according to the subjoined schedule showing the pools to be prorated, the potential production, daily production of each, the percentage of potential production allowable in each pool and the resulting production under proration for the said three (3) months period, and the shut-in time in each pool:

Potential and Allowed Production, State of Oklahoma, July, August, September, 1930

	July		August		September	
	Est. potent.	Est. prod.	Est. potent.	Est. prod.	Est. potent.	Est. prod.
Production allowed, 66 2/3%:						
Allen (Wilcox)	7,000	4,667	6,650	4,433	6,300	4,200
Allen (Cromwell)	18,433	12,289	17,880	11,920	17,880	11,920
Bowlegs	30,056	20,037	29,154	19,436	29,154	19,436
Carr City	11,252	7,501	10,814	7,209	10,490	6,993
Earlsboro (old)	29,585	19,723	28,698	19,132	27,838	18,559
Earlsboro (Towns)	9,000	6,000	8,100	5,400	7,290	4,860
Little River	48,907	32,605	47,440	31,627	46,017	30,678
E. Little River	20,000	13,333	19,000	12,667	18,000	12,000
Marshall-Lovell	6,000	4,000	5,820	3,880	5,645	3,763
Maud	6,262	4,175	6,074	4,049	5,892	3,928
Mission	15,714	10,476	15,243	10,162	14,786	9,857
Sasakwa	10,800	7,200	9,720	6,480	8,750	5,833
Searight	14,235	9,490	13,808	9,205	13,394	8,929
Seminole	30,296	20,197	29,387	19,591	29,387	19,591
East Seminole	4,405	2,937	4,273	2,849	4,145	2,763
St. Louis	40,000	26,667	38,800	25,867	37,636	25,091
Subtotal	301,945	201,297	290,861	193,907	282,604	188,401
Production allowed, 33 1/3%:						
East Earlsboro	60,000	20,000*	50,000	20,000*	40,000	20,000*
So. Earlsboro	35,000	11,666	28,000	9,333	20,000	6,666
Subtotal	95,000	31,666	78,000	29,333	60,000	26,666

* Min.

[fol. 37] Potential and Allowed Production, State of Oklahoma, July August and September, 1930—Continued

	July		August		September	
	Est. potent.	Est. prod.	Est. potent.	Est. prod.	Est. potent.	Est. prod.
Production allowed, 25%:						
West Asher-Wanette	16,000	4,000	12,000	3,000	12,000	3,000
Konawa (Adjusted)	80,000	20,000	76,000	19,000	60,000	15,000
Miscl. (Chandler, et al)	8,000	2,000	28,000	7,000	28,000	7,000
Subtotal	104,000	26,000	116,000	29,000	100,000	25,000
Oklahoma City	600,000	130,037	600,000	134,760	600,000	146,933
Wells, in Prorated Areas, Not Prorated	10,000	10,000	10,000	10,000	10,000	10,000
Total—Prorated Areas	1,110,945	399,000	1,094,861	397,000	1,052,604	397,000
Outside Areas—Not Prorated	251,000	251,000	253,000	253,000	253,000	253,000
Total State	1,361,945	650,000	1,347,861	650,000	1,305,604	650,000

Schedule of Shut-in Time in Prorated Areas

Area	No. of days cement to set	No. of days of open flow for test	Days shut down	Total
Oklahoma City	7	1	57	65
East Earlsboro	7	1	41	49
Konawa	7	1	16	24
West Asher-Wanette	7	1	16	24
Marshall-Lovell	7	1	16	24
So. Earlsboro	7	1	16	24
Seminole et al	7	1	16	24

(g) The Commission finds from the evidence that the curtailment and the varying percentages as between pools prescribed in the schedule contained in paragraph (f) herein are necessary and reasonable in order to reduce production in this State to demand and in a manner least injurious to the producers and royalty owners as a whole, and in order to prevent unfair and unreasonable discrimination in favor of any one pool or common source of supply as against another. That the approximate number of wells in the pools described in this Petition is 3,085 and that their aggregate potential production is 1,111,000 barrels, or an average of 360.13 barrels per well per day. That outside of these enumerated pools and in the State at large are some 60,000 older and smaller wells producing in the aggregate and uncurtailed 251,000 barrels daily or an average of 4.18 barrels per well per day. That proration should be applied to the flush and semi-flush pools as distinguished from the old, small wells in the State for the following reasons, to-wit: First, that by reason of the large number of said old, small wells and the fact that they are scattered throughout the State, their proration and regulation would present an insuperable administrative difficulty in which it would be impossible to do equity and avoid discrimination as between them. Second: That their production per well is so small that the degree of curtailment which might be enforced would yield a negligible contribution to the amount of reduction [fol. 38] necessary in the State as a whole. Third: That the production per well is only 4.18 barrels, and in the case of some 30,000 of said small wells the per well production is only one barrel or a fraction thereof per day and because thereof said wells could not pay expenses of operation if their production should be reduced. Curtailing their output would cause thousands of them to be abandoned and their owners to suffer serious financial loss and would cause the waste of a valuable natural resource. Fourth: the great majority of said old small wells produce large quantities of water along with the oil and must be pumped regularly to prevent ruin by water encroachment. Fifth: As a general rule each of the old, small wells has an established and adequate pipeline outlet. Sixth: and, con-

versely, the objections in this paragraph enumerated in regard to old, small wells, do not apply in as great degree or at all in the case of the flush and semi-flush pools to which proration is sought to be applied. That because of the distinctions between the small wells of this State and the wells in the flush or semi-flush pools, as alleged in this paragraph, said small wells and the production therefrom should be excepted from the rules and regulations prayed for in this proceeding, in order to prevent unreasonable discrimination in favor of one or more common sources of supply of petroleum in this State as against another or other common sources of supply therein.

(h) The Commission finds that the varying percentages of curtailment as between pools as set forth in paragraph (f) of this Order are necessary, fair and reasonable because of the peculiar conditions in each case and in this, to-wit: that said pools are not all served in common by the same pipe lines and purchasers; that the outlet for certain of them is greater in proportion to potential production than in the case of others; that some of them are older than others and have been prorated longer than others, under orders of the Corporation Commission, with a consequent gr-ater reduction in potential flow and smaller possible production per well per day and are, therefore, accorded a higher percentage allowable production; that in many cases individual pools are served by local purchasers whose facilities cannot be extended to the others, and in certain of the pools the sand and water conditions prevent as great curtailment as is possible in others; and that in certain pools there is a more intensive drilling campaign and wells of larger capacity than in others. The Commission also finds that in the making of said schedule in paragraph (f) the producers and purchasers in all of said pools were consulted and meetings of all of said producers and purchasers were held at which all of the foregoing factors were considered and that said schedule represents the consensus of opinion of said producers and purchasers as to reasonableness of arrangement, necessity and convenience of producers and purchasers and equity as between the various common sources of supply, and was agreed to by all producers and purchasers except one.

(i) The Corporation Commission finds that by virtue of the facts, as herein set forth, (1) that it is necessary to curtail production in each of the pools herein mentioned in order to reduce the output of the State to consumption demands from the State as a whole, and thus to avoid waste, and (2) that the plan and schedule of percentages as contained in paragraph (f) are necessary to be observed in the case of such lease in order to prevent the inequitable or unfair taking by any person, firm or corporation from any one of said pools as a common source of supply and to prevent unreasonable discrimination in favor of any one such common source of supply as against another, and by virtue of the further fact that no one purchaser nor all of the purchasers together and no one pipeline or transporter nor all pipelines and transporters together is or are able or willing to purchase and/or transport all of the oil from all of said pools, it is necessary that each purchaser and trans- [fol. 39] porter from each of said pools conform and apportion his takings from each lease and pool to the percentages of potential output applicable thereto as set forth in the said schedule contained in paragraph (f) herein.

And said Commission further finds that if any purchaser or transporter should fail or refuse to so conform but should violate the plan as set forth in paragraph (f) by taking more than the due proportion as fixed by said plan, from any lease or leases in the said prorated areas, his action would have the immediate effect of discriminating against any of doing injury to surrounding owners by drainage and disporportionate use of the gas pressure and of creating discrimination as between pools and would have the further effect of hindering, impeding or disrupting the whole plan or scheme for the prevention of waste as adopted and promulgated by the Corporation Commission. For these reasons the purchasers and transporters now serving each or any of said pools, or who may hereafter do so, are hereby made parties to this proceeding and said purchasers and transporters are hereby prohibited from violating the rules and regulations and orders of the Commission as herein set forth or in any manner aiding or abetting any producer in so doing.

(j) The Corporation Commission further finds that in addition to the prevention of waste of crude oil, the estab-

lishment of the curtailment plan in this Order set forth will tend to conserve natural gas and gas pressure in the pools to which it shall be applied.

(k) The Corporation Commission finds that the output from the Oklahoma City pool should be limited to the reasonable market demand from said pool, which at the present time is about 16⅔% of the potential production, but which may increase to as much as 25% of the potential production from said Oklahoma City area and that, therefore, the maximum permitted production should be left at 25% of the potential as in existing orders, and that the Umpire and Operators Committee are authorized to fix, from time to time, the rate of curtailment necessary in said area in order to conform the actual production to the actual demand from that area, with a maximum allowance of 25% of potential; it being understood, however, that whatever demand there is from the Oklahoma City pool shall be prorated among all of the producing leases therein.

(l) With reference to East Earlsboro, the Corporation Commission finds that said pool is on the decline and, owing to the possibility that said decline may be more rapid than is now estimated, it should be ordered that a minimum allowed production of 20,000 barrels per day for the East Earlsboro pool be specified so that, if the application of a curtailment of 66⅔% to the potential should at any time reduce the allowed production below 20,000 barrels per day for the pool as a whole, the Umpire and Operators Committee shall have authority to readjust the percentage so that a minimum production of 20,000 barrels per day from the pool as a whole shall be allowed.

(m) The Corporation Commission finds that new pools or sands which may be opened up between July 1st and September 30th, 1930, should be curtailed 75% of potential until otherwise ordered by the Commission.

[fol. 40] (n) The Corporation Commission further finds that the allegations of the Petition filed herein are true and correct and that accordingly these conditions of waste now exist in said pools, and commission of waste is imminent, and the same should be prohibited and prevented, and the following rules and regulations are necessary, reasonable and appropriate for that purpose.

It is therefore ordered by the Corporation Commission of the State of Oklahoma as follows:

1

That the following specific orders be and they hereby are established as rules and regulations of this Commission to prevent the waste of petroleum in the Oklahoma City, East Earlsboro, South Earlsboro, Marshall-Lovell, Allen Dome, Sasakwa, Konawa, St. Louis, West Asher-Wanette, Chandler, West Perry, Orlando and Township 20 North, Range 4 West, and all pools in the Greater Seminole Area as shown by map attached to the Petition herein, and all other producing areas that may come into production during the months of July, August and September, 1930, all in the State of Oklahoma.

2

Ray M. Collins is hereby appointed as Umpire and Agent of the Corporation Commission to enforce the rules and regulations herein made, and he is hereby authorized to employ as many assistants as he shall deem necessary. To assist the Umpire in administering these rules and regulations, the following Committees of Operators are appointed as agents of the Corporation Commission for the following named pools respectively:

Allen Pool:

R. A. Griffith	Sinclair
C. H. Wright	Sunray
Geo. Moody	Mid-Continent

Lovell (Logan Co.) Pool:

H. D. Aggers	Wentz
Glenn Haroun	Sinclair
Mr. Bond	Shell
Mr. Church	J. E. Crosbie, et al.

Greater Seminole (and East and South Earlsboro and Konawa):

J. S. Sidwell	Prairie
J. J. Conry	Carter
R. F. McArthur	Barnsdall
Kenneth-Winship	Gypsy
L. C. Hawkins	Magnolia

Oklahoma City Pool:

M. J. Kirwan	I. T. I. O.
J. S. Sidwell	Prairie
Wirt Franklin	Cromwell-Franklin
Ralph Roark	Shell
Glenn Haroun	Sinclair

[fol. 41] West Asher-Wanette:

Ralph Roark	Shell
J. S. Sidwell	Prairie
M. J. Kirwan	I. T. I. O.

Where percentage proration is applied a gauge of producing wells shall be taken by the Umpire or under his supervision in the following manner: the gauge to determine potential shall be taken by each operator in the pool in respect of the lease or leases owned by him therein and then producing, such gauge to be taken between the hours of seven A. M. on the day set by the Umpire and seven A. M. on the following day. Prior to the taking of such gauge and in respect of each producing lease covered hereby, the Umpire shall appoint a representative of an operator owning a lease adjoining the particular property to be gauged, and shall notify the operator whose property is to be gauged of the name of the representative, such notification to be given prior to the taking of such gauge. It shall be the positive duty of such representative to remain on the lease that is being gauged throughout the entire day that the gauge is being taken to witness the gauging of the production therefrom; and immediately upon the completion of such gauge, such witness and the operator whose property was gauged shall file a written statement with the Umpire showing the production of said lease, and of each well thereon for the day said gauge is taken. The production so shown shall constitute the potential for said lease until the next gauge is taken. During the time this Order is in force, a similar gauge of each property shall be taken from time to time as the Umpire may designate but not less than once each month, except that in the entire Greater Seminole area, aside from South Earlsboro, East Earlsboro, East Little River, Sasakwa, Konawa, West Asher-Wanette, Earlsboro Townsite and Wilcox wells in Allen pools, the gauge may, upon direction of the Um-

pire, be determined by applying the proper decline curve for each lease so gauged.

4

Oklahoma oil production shall be limited to an average of 650,000 barrels per day during each of said months of July, August and September, 1930, plus such increase from the Oklahoma City pool as the reasonable market demand may justify and within the maximum of 25% of potential production, and said figure of 650,000 barrels per day represents the reasonable market demand during said period for the State as a whole and same shall be used as the basis for the limitation of production in this State until the Corporation Commission shall find from evidence that the same should be changed. The curtailment of production in Oklahoma shall be accomplished by a proration of the following producing areas and any extensions thereof, to-wit: Oklahoma City, East Earlsboro, South Earlsboro, Marshall-Lovell, Allen Dome, Sasakwa, Konawa, St. Louis, West Asher-Wanette, Chandler, West Perry, Orlando and Township 20 North, Range 4 West, and all pools in the Greater Seminole Area as shown by map attached to Petition herein.

5

Each person, firm or corporation having the right to drill into and produce oil from any of the pools or areas and extensions thereof that are covered by this order may take from such pool or area and extensions thereof only such proportion of all crude oil and petroleum that may be produced therefrom under this Order as the production of the well or wells of such person, firm or corporation in said pool or area bears to the total potential production of such pool or area. In the case of each such pool or area the Umpire and the Operators' Committee for said pool or area shall determine whether the production shall be [fol. 42] curtailed on a time basis or on the basis of a percentage of potential daily production but such decision shall be reported by the Umpire to this Commission for approval and in no event shall any pool and its extensions be permitted to produce more than its allowable output as fixed by this Order.

6

Beginning July 1, 1930, and continuing until and including September 30th, 1930, the production of all wells in the following pools shall be curtailed 33 1-3% of their potential production: Allen Dome (Wilcox and Cromwell sands), Bowlegs, Carr City, Earlsboro (old), Earlsboro Townsite, Little River, East Little River, Marshall-Lovell, Maud, Mission, Sasakwa, Searight, Seminole, East Seminole and St. Louis.

7

Beginning July 1st, 1930, and continuing until and including September 30, 1930, the allowable production of all wells in the Oklahoma City pool shall be that proportion of their potential production that the reasonable market demand from the pool as a whole shall bear to the potential production of the pool as a whole. Provided, that the maximum allowed production shall be 25 percent of potential production; and, Provided further, that whatever demand for petroleum from the Oklahoma City pool that may exist shall be prorated and allocated among all the producing leases. In case the reasonable market demand shall at any time be less than 25% of the potential production the Umpire and Operators' Committee shall fix such percentage of potential production as will allow a production equal to said reasonable market demand.

8

Beginning July 1, 1930, and continuing until and including September 30, 1930, the production of all wells in the East Earlsboro pool shall be curtailed 66 2-3% of potential production but if at any time the potential production should decline to such an extent that the application of a curtailment of 66 2-3% would reduce the allowed production of the pool as a whole below 20,000 barrels per day, then and in that event the Umpire and Operators' Committee shall fix a percentage of potential production which will allow the pool as a whole to produce a minimum of 20,000 barrels per day.

9

Beginning July 1, 1930, and continuing until and including September 30, 1930, the production of all wells in the

South Earlsboro pool shall be curtailed 66 2-3% of potential production.

10

Beginning July 1, 1930, and continuing until the including September 30, 1930, the production of all wells in the following named pools and any extensions thereof, together with any new pools that may be opened during said period, shall be curtailed 75% of potential production; West Asher-Wanette, Konawa, Chandler, West Perry, Orlando and Township 20 North, Range 4 West.

11

Where shortages and overages have occurred under previous Orders of this Commission, the same shall be carried [fol. 43] forward and adjusted, during the month of July. Any lease showing an average of one barrel or more at August 1st or at the first day of any month thereafter during the life of this Order shall be immediately reported by the Umpire under oath to the Corporation Commission as a basis for citation and such report shall contain in addition to the location of the property and the amount of the overage, the names and addresses of the lessee, the purchaser of the oil and the transporter. Leases which are being gauged according to a decline curve and showing a shortage at the end of any month of more than two days allowed production shall take as their potential for the following month the daily average production of the last ten days of the month. And in the case of such leases, shortages of two days allowable production or less shall be credited on the next month's allowed production.

12

To establish equality between producing wells and drilling wells, each well now drilling in any of said areas, or which may be commenced in said areas or in any new areas prior to September 30, 1930, shall take a delay prior to being brought into production, equal to the accumulated shut-in time and accumulated equivalent time resulting from pinching of producing wells from the beginning of the proration period in each pool, said period of delay to be computed in each instance after allowing seven (7) days for the cement to set: Provided the maximum shut-in time

in each of said pools shall be according to the following schedule:

Area	No. of days cement to set	No. of days of open flow for test	Days shutdown	Total
Oklahoma City	7	1	57	65
East Earlsboro	7	1	41	49
Konawa	7	1	16	24
West Asher-Wanette	7	1	16	24
Marshall-Lovell	7	1	16	24
South Earlsboro	7	1	16	24
Seminole, et al	7	1	16	24

Previous orders of the Corporation Commission as to wells now completed but not on production shall be continued in effect as to the shutdown requirements therein.

13

That all purchasers and carriers of oil in the State of Oklahoma be and they are hereby forbidden to purchase or carry oil produced in violation of these Orders of the Commission.

14

In the Konawa, East Earlsboro and South Earlsboro pools, so long as the percentage method of curtailment is used, the same shall be modified as to leases of small production as follows:

Percentage Plan for Konawa Pool

Size of wells

(Average bbls. per well per lease)	Per cent of potential production allowed
Over 400 Barrels	25%
300-400 "	30%
[fol. 44] 200-300 Barrels	35%
100-200 Barrels	50%
Less than 100 Bbls.	66⅔%

Percentage Plan for South Earlsboro and East Earlsboro

Over 300 Barrels	33⅓%
200-300 "	40%
100-200 "	50%
Less than 100 Bbls.	66⅔%

Jurisdiction of this cause is hereby retained by the Corporation Commission and notice is hereby given that supplemental and ancillary orders may be made herein from time to time as required by new developments and as instructions to the Umpire and Operators Committees. When in the judgment of the Umpire or Any Operators' Committee any such supplemental or ancillary order shall become necessary the facts supporting the necessity therefor and the reasonableness thereof shall be reported to the Commission for approval, and no exception to these rules and regulations shall be allowed by the Umpire unless approved by such an ancillary order.

Done at Oklahoma City this 30th day of June, 1930.

Corporation Commission of Oklahoma. C. C. Childers, Chairman. Fred Capshaw, Commissioner. E. R. Hughes, Commissioner.

Attest: E. D. Hicks, Jr., Secy.

STATE OF OKLAHOMA,
Oklahoma County, ss:

I, E. D. Hicks, Jr., Secretary of the Corporation Commission of Oklahoma, do hereby certify that the foregoing is a true and correct copy of the Commission's Order No. 5189 issued under date of June 30th, 1930, in Cause No. 10146, the original of which is now on file in this department.

In testimony whereof I hereunto set my hand and affix the seal of the corporation Commission of Oklahoma.

Done in Oklahoma City, Oklahoma, this the 28th day of October, 1930.

(Signed) E. D. Hicks, Jr., Secretary Corporation Commission of Oklahoma. (Seal.)

[fol. 45] EXHIBIT "B"

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause No. 10,146. Order No. 5292

In the matter of the Application of Ray M. Collins for Rules and Regulations to be Established by the Commission to Prevent the Waste of Petroleum in the Oklahoma City, East Earlsboro, South Earlsboro, Marshall-Lovell, Allen Dome, Sasakwa, Konawa, St. Louis, West Asher-Wanette, Chandler, West Perry, Orlando, and Township 20 North, Range 4 West, and all Pools in the Greater Seminole Area as Shown by the Map Attached to the Petition Herein, and all Other Producing Areas That May Come Into Production During the Months of July, August, and September, 1930, all in the State of Oklahoma

Order Modifying the Original Order Issued in This Cause and Amending the Rules and Regulations Established Thereby

Comes now Ray M. Collins and presents his written application in person and by counsel, and this matter being set for hearing on this day and the Corporation Commission, having heard and considered the evidence of the applicant and the evidence of any and all persons opposing said application, and being advised in the premises, finds as follows:

(a) That the lands covered and affected by this application and which will be subject to the amended rules and regulations established by this order are those described in the original petition herein and in the map attached thereto.

(b) That notice by publication on all persons or classes interested in this proceeding and in the rules and regulations to be established hereby has been given as required by law in a newspaper of general circulation in this state and that, in addition, reasonable notice in writing has been served personally on all persons, firms and corporations complained against in this proceeding.

(c) That since the issuance of the original order herein, the potential production of crude oil in the State of Oklahoma has increased to 1,481,118 barrels per day, while the reasonable market demand has decreased from 650,000 barrels to 550,000 barrels per day, a decrease of 100,000 barrels in daily average demand since June 30th.

(d) That it is, therefore, necessary to further curtail the output of crude petroleum in Oklahoma for the month of September 1930 in order to prevent waste as defined by the laws of this State, and that the original order herein should be modified by reducing the percentages of permitted production in the pools herein mentioned by 25% according to the following schedule:

[fol. 46] Potential and Allowed Production, State of Oklahoma

Field	September, 1930 Estimated potential	Estimated production
Production Allowed, 50%:		
Allen (Wilcox)	9,000	4,500
Allen (Cromwell)	17,927	8,964
Bowledgs	28,327	14,164
Carr City	10,494	5,247
Earlsboro (old)	28,665	14,332
Earlsboro Townsite	10,000	5,000
Little River	46,528	23,264
East Little River	22,000	11,000
Marshall-Lovell	5,650	2,825
Maud	5,712	2,856
Mission	14,673	7,337
Sasakwa	9,500	4,750
Searight	13,205	6,602
Seminole	28,470	14,235
East Seminole	4,145	2,072
St. Louis	38,972	19,486
Subtotal	293,268	146,634
Production Allowed, 25%:		
East Earlsboro	40,000	15,000*
South Earlsboro	35,000	8,750
Subtotal	75,000	23,750

[* Min.]

Field	September, 1930 Estimated potential	Estimated production
Production Allowed, 18¾%:		
West Asher-Wanette	35,000	6,563
Konawa (adjusted)	68,000	12,750
Subtotal	103,000	19,313
Production Allowed, Adjusted Maximum:		
Tatums	12,000	2,500
Chandler	30,000	2,500
West Perry	1,200	600
Orlando	850	400
Twp. 20 No.—Range 4 West	800	400
Subtotal	44,850	6,400
Oklahoma City	700,000	88,903
Wells, in Prorated Areas, Not Prorated	5,000	5,000
Total—Prorated Areas	1,221,118	290,000
Outside Areas—Not Prorated	260,000	260,000
Total State	1,481,118	550,000

[fol. 47] (e) The Corporation Commission further finds that by applying a uniform percentage reduction of the original percentages named in the Order of June 30th, the said prorated pools will be maintained in the same relation to each other as under said original order, and that unfair discrimination as between said pools and as between the leases therein will be prevented, and that the adoption of said schedule set forth in paragraph (d) is necessary in order to prevent waste of petroleum.

(f) The Corporation Commission further finds that the reduction of permitted percentages of potential should be made flexible so that, should the demand for Oklahoma crude increase prior to September 30, 1930, the percentage of reduction herein set forth may be reduced upon application of the Umpire supported by evidence.

(g) That accordingly these conditions of waste now exist in said pools or are imminent and such waste should be prevented.

It is, therefore, ordered by the Corporation Commission of the State of Oklahoma as follows:

1

That the original order herein be and the same is hereby modified to the following extent, and that the following specific orders be and they hereby are established as rules and regulations of this Commission to prevent the waste of petroleum in the Oklahoma City, East Earlsboro, South Earlsboro, Marshall-Lovell, Allen-Dome, Sasakwa, Konawa, St. Louis, West Asher-Wanette, Chandler, West Perry, Orlando and Township 20 North, Range 4 West, and all pools in the Greater Seminole Area as shown by map attached to the original petition herein, and the extension to the Tatums pool and all other producing areas that may come into production during the month of September, 1930, all in the State of Oklahoma.

2

Oklahoma oil production shall be limited to an average of 550,000 barrels per day from September 1, to September 30, 1930, plus such increase from the Oklahoma City pool as the reasonable market demand may justify and within the maximum of 18¾% of potential production, and said figure of 550,000 barrels per day represents the reasonable market demand during said period for the state as a whole and same shall be used as the basis for the limitation of production in this State, until September 30, 1930. The curtailment of production in Oklahoma shall be accomplished by a proration of the following producing areas and any extensions thereof, to-wit: Oklahoma City, East Earlsboro, South Earlsboro, Marshall-Lovell, Allen Dome, Sasakwa, Konawa, St. Louis, West Asher-Wanette, Chandler, West Perry, Orlando and Township 20 North, Range 4 West, and all pools in the Greater Seminole Area as shown by map attached to original petition herein, and the Tatums Extension as in this order described.

3

Each person, firm or corporation having the right to drill into and produce oil from any of the pools or areas and ex-

tensions thereof that are covered by this order may take from such pool or area and extensions thereof only such proportion of all crude oil and petroleum that may be produced therefrom under this order as the potential production of the well or wells of such person, firm or corporation in said pool or area bears to the total potential production of such pool or area. In the case of each such [fol. 48] pool or area the Umpire and the Operators' Committee for said pool or area shall determine whether the production shall be curtailed on a time basis or on the basis of a percentage of potential daily production but such decision shall be reported by the Umpire to this Commission for approval and in no event shall any pool and its extensions be permitted to produce more than its allowable output as fixed by this Order.

4

Beginning September 1, 1930, and continuing until and including September 30, 1930, the production of all wells in the following pools shall be curtailed 50% of their potential production: Allen Dome (Wilcox and Cromwell sands), Bowlegs, Carr City, Earlsboro (old), Earlsboro Townsite, Little River, East Little River, Marshall-Lovell, Maud, Mission, Sasakwa, Searight, Seminole, East Seminole and St. Louis.

5

Beginning September 1, 1930, and continuing until and including September 30, 1930, the allowable production of all wells in the Oklahoma City pool shall be that proportion of their potential production that the reasonable market demand from the pool as a whole shall bear to the potential production of the pool as a whole. Provided, that the maximum allowed production shall be 18¾% of potential production; and, provided further, that whatever demand for petroleum from the Oklahoma City pool may exist shall be prorated and allocated among all the producing leases. In case the reasonable market demand shall at any time be less than 18¾% of the potential production the Umpire and Operators' Committee shall fix such percentage of potential production as will allow a production equal to said reasonable market demand.

6

Beginning September 1, 1930, and continuing until and including September 30, 1930, the production of all wells in the East Earlsboro pool shall be curtailed 75% of potential production, but if at any time the potential production should decline to such an extent that the application of a curtailment of 75% would reduce the allowed production of the pool as a whole below 15,000 barrels per day, then and in that event the Umpire and Operators' Committee shall fix a percentage of potential production which will allow the pool as a whole to produce a minimum of 15,000 barrels per day.

7

Beginning September 1, 1930, and continuing until and including September 30, 1930, the production of all wells in the South Earlsboro pool shall be curtailed 75% of potential production.

8

Beginning September 1, 1930, and continuing until and including September 30, 1930, the production of all wells in the following pools and any extensions thereof shall be curtailed 81¼% of potential production: West Asher-Wanette and Konawa.

9

Beginning September 1, 1930, and continuing until and including September 30, 1930, the production of the extension of the Tatums Pool, said extension being located in Sections 18 and 19, Township 1 South, Range 2 West and Sections 13 and 24, Township 1 South, Range 3 West, shall be curtailed to a maximum production of 2500 barrels per day, as per the following schedule: Wells capable of producing 400 barrels per day or more shall be allowed a maximum production of 100 barrels per well per day; and wells not capable of producing 400 barrels or more per day shall be allowed a maximum production of 50 barrels per well per day. In the event that the above schedule of [fol. 49] maximum production per well does not hold the total production of the area within the maximum of 2500

barrels per day for the whole area, the Umpire and Operators' Committee shall adjust and fix said per well maximums at such figures as will keep the production of the whole area within the allowed 2500 barrels per day.

10

Beginning September 1, 1930, and continuing until and including September 30, 1930, the production of the Chandler Pool and any extensions thereof shall be curtailed to a maximum production of 2500 barrels per day, with the provision that the maximum production from each and every well shall be limited to 100 barrels per day as a maximum. In the event that the above schedule of maximum production per well does not hold the total production of the area within the maximum of 2500 barrels per day for the whole area, the Umpire and Operators' Committee shall adjust and fix said per well maximum at such figure as will keep the production of the whole area within the allowed 2500 barrels per day.

11

Beginning September 1, 1930, and continuing until and including September 30, 1930, the production of the following named pools and any extensions thereof shall be limited to the following maximums: West Perry, 600 barrels per day; Orlando, 400 barrels per day; and Township 20 North, Range 4 West, 400 barrels per day.

12

Beginning September 1, 1930, and continuing until further order of this Commission, all wildcat wells completed for crude oil production shall be limited to a maximum daily production of fifty barrels each, so long as no other well is started on any other lease and within one-half (½) mile of any such producing wildcat well. If a well is started on any other such lease in the said drainage area, such discovery well shall be permitted to produce to capacity until the second well is completed in the same formation unless the operators in said drainage area agree upon and submit to this Commission for approval a conservation plan of operation for said field; if no such plan is agreed upon and submitted as aforesaid and such subsequent well or wells shall be completed as producers, then all wells

shall be curtailed to 50 barrels each day until further order of this Commission.

13

That all purchasers and carriers of oil in the State of Oklahoma be and they are hereby forbidden to purchase or carry oil produced in violation of these orders of the Commission.

14

In the Konawa, East Earlsboro and South Earlsboro pools, so long as the percentage method of curtailment is used, the same shall be modified as to leases of small production as follows:

Percentage Plan for Konawa Pool

Size of Wells

Average bbls. per well per lease	Per cent of potential production allowed
Over 400 barrels	18¾%
300-400 barrels	22½%
200-300 "	26¼%
100-200 "	37½%
Less than 100 Bbls.	50%

[fol. 50] Percentage Plan for South Earlsboro and East Earlsboro

Size of Wells

Average bbls. per well per lease	Per cent of pot. prod. allowed
Over 300 barrels	25%
200-300 "	30%
100-200 "	37½%
Less than 100 Bbls.	50%

15

Jurisdiction of this cause is hereby retained by the Corporation Commission and notice is hereby given that supplemental and ancillary orders may be made herein from time to time as required by new developments and as instructions to the Umpire and Operators' Committee. When

in the judgment of the Umpire or any Operators' Committee any adjustment or fixing of percentages or well production as provided in this order shall be proper, or as any such supplemental or ancillary order shall become necessary the facts supporting the necessity therefor and the reasonableness thereof shall be reported to the Commission for approval, and no exception to these rules and regulations shall be allowed by the Umpire, nor shall any adjustment of percentages or well production become effective, unless approved by such an ancillary order of this Commission. Except as modified by this Order, the original order, rules and regulations issued by the Corporation Commisssion on June 30, 1930, in this cause shall remain in full force and effect until September 30, 1930. Should the demand for crude oil from the State of Oklahoma increase prior to September 30, 1930, to such an extent as to permit a greater outlet from the pools herein mentioned, the Umpire shall report the facts to the Commission, together with the recommended percentages, and the Corporation Commission hereby gives notice that such revised percentages, may be substituted for the 25% additional reduction provided for in this order.

Done at Oklahoma City this the 30th day of August, 1930.

Corporation Commission of Oklahoma. (Signed) C. C. Childers, Chairman. E. R. Hughes, Commissioner.

Attest: E. D. Hicks, Jr., Secy. (Seal.)

[fol. 51] STATE OF OKLAHOMA,
Oklahoma County, ss:

I, E. D. Hicks, Jr., Secretary of the Corporation Commission of Oklahoma, do hereby certify that the foregoing is a true and correct copy of the Commissioner's order No. 5246 issued in Cause No. 10146 under date of July 24th, 1930, the original of which is now on file in this department.

In testimony whereof I hereunto set my hand and affix the seal of the Corporation Commission of Oklahoma.

Done in Oklahoma City, Oklahoma, this the 28th day of October, 1930.

E. D. Hicks, Jr., Secretary Corporation Commission of Oklahoma. (Seal.)

[fol. 52] EXHIBIT "C"

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause No. 10146. Order No. 5337

In the Matter of the Application of RAY M. COLLINS for Rules and Regulations to be Established by the Commission to Prevent the Waste of Petroleum in the Oklahoma City, East Earlsboro, South Earlsboro, Marshall-Lovell, Allen Dome, Sasakwa, Konawa, St. Louis, West Aster-Wanette, Chandler, West Perry, Orlando, and Township 20 North, Range 4 West, and All Pools in the Greater Seminole Area as Shown by the Map Attached to the Petition Herein, and All Other Producing Areas That May Come Into Production During the Months of July, August, and September, 1930, All in the State of Oklahoma

Order No. 5337

Upon consideration of the verified application of Ray M. Collins in the above entitled cause and of the matters and things now adduced in support thereof, the Commission finds that the potential production of crude oil in the State of Oklahoma far exceeds the market demand and transportation facilities therefor, that by reason of pending litigation it is inexpedient to undertake at this time a new investigation into the matters involved in the Orders to which reference is hereinafter made, but that to prevent waste in the production of crude oil in the State of Oklahoma it is necessary and proper that the proration plan now in force be carried forward temporarily by order supplemental to those now in force until a decision upon the rights and powers of this Commission has been reached by the Courts, and that it is reasonable to assume that a decision thereon will be handed down in the near future.

It is therefore ordered that Order No. 5189 of this Commission as modified by Orders No. 5246 and 5292 and all supplemental orders be and the same is hereby extended in force until and including the 10th day of October, 1930.

[fol. 53] Done by the Corporation Commission of Okla-

homa at its office in the State Capital at Oklahoma City, Oklahoma, this 30th day of September, 1930.

Corporation Commission of Oklahoma. C. C. Childers, Chairman. Fred Capshaw, Commissioner. E. R. Hughes, Commissioner.

Attest: E. D. Hicks, Jr., Secy.

Certificate

STATE OF OKLAHOMA,
Oklahoma County, ss:

To all to whom these presents shall come, Greetings:

I, E. D. Hicks, Secretary of the Corporation Commission of Oklahoma, do hereby certify that the following hereto attached is a true and correct copy of Order No. 5337, original of which is on file and matter of record of this office.

In testimony whereof I hereunto set my hand and affix the seal of the Corporation Commission of Oklahoma.

Done in Oklahoma City this the 2nd day of October, 1930.

E. D. Hicks, Jr., Secretary Corporation Commission of Oklahoma. (Seal.)

[fol. 54] EXHIBIT "D"

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause No. 10326. Order No. 5369

In the Matter of the Application of WIRTH FRANKLIN for Rules and Regulations to be Established by the Commission to Prevent Waste of Petroleum in the Producing Oil Fields of the State of Oklahoma

Order

Comes now petitioner herein and various and sundry producers of oil in the State of Oklahoma, and this matter having been set for hearing on this 10th day of October, 1930, and the Commission having heard and considered the evidence of the petitioner and sundry other persons, and the evidence of any and all persons opposing the petition and the supplemental petition herein, and the Commission having made an investigation of the facts alleged and of the conditions in the oil fields of Oklahoma, and being fully advised in the premises, finds as follows:

(a) That areas to be covered by the rules and regulations herein prayed for are all of the oil producing areas in the State of Oklahoma and those new sands or areas which may be brought into production during the months of October, November and December, 1930.

(b) That notice by publication on all persons or classes interested in this proceeding and in the rules and regulations to be established hereby has been give- as required by law, in a newspaper of general circulation in this State, and that, in addition, reasonable notice in writing has been served personally on all persons, firms and corporations known to petitioner to be interested in this proceeding and due proof of service of notice has been made and filed herein.

(c) The Corporation Commission finds from the evidence that there is an overproduction of crude oil in the State of Oklahoma attended by waste of gas and of gas pressure and that the producers of crude oil in the oil pools of Oklahoma are threatening to and will, unless restrained by the rules and regulations of the Corporation Commission, commit physical waste of crude oil, economic waste, underground waste, surface waste and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands, and that the commission of such waste is so imminent in each of the areas involved in this proceeding that orders, rules and regulations of this Commission are necessary in order to prevent such waste.

The Commission further finds that there is a general overproduction and importation of crude and refined petroleum in the United States, and that this fact tends to reduce the amount of crude oil that can be produced in the State of Oklahoma without waste; that the potential production of crude oil in the United States is at this time approximately 10,000,000 barrels per day, and imports of crude and refined petroleum aggregate about 300,000 barrels per day, thus creating a total possible current supply of 10,300,000 barrels per day as against an approximate daily demand for domestic use and export of 2,800,000 barrels per [fol. 55] day. That by reason of this great over supply and threatened waste, potential production is now being curtailed in Oklahoma and other producing regions, and

unless there is a continuance of curtailment of production in the areas involved herein, the conservation measures now in effect in the other oil producing states may be abandoned, thus causing large quantities of petroleum to be produced in such other state in excess of their local demand and forced upon the market to the demoralization of the industry and a consequent increase in waste in this State and an undue exhaustion of our oil resources. The Commission finds that this petroleum situation constitutes a great state emergency and that the laws of the State of Oklahoma and the powers of the Corporation Commission should be availed of to remove the same.

(d) The Commission further finds from the evidence that, in addition to the excess of potential and actual production and imports over current demand, there are stocks of petroleum on hand in the United States aggregating more than 685,000,000 barrels, which stocks are excessive and beyond the needs of the petroleum industry. That by reason of the excessive supply thus indicated, the purchasers of crude oil in Oklahoma are unwilling to purchase crude oil in Oklahoma for storage purposes in any amount that would be adequate to take care of the surplus of potential production over current demand and that, therefore, there is not sufficient empty tankage available to take care of said excess and unless potential production in Oklahoma is curtailed, much oil would necessarily go to earthen storage where it would evaporate and escape and thus be wasted. The Commission further finds that the storage of oil in Oklahoma under existing conditions would involve waste for the further reason that there is already an excess of stored oil locally and, there is being an oversupply, oil now stored would have to remain in storage for a great length of time and would deteriorate.

(e) The Commission finds from the evidence that in order to curtail the production of crude oil in Oklahoma in a manner to prevent the commission of waste and to protect the coequal rights of producers in each pool, it will be necessary to enforce proportionality of taking from the wells and leases in each of the pools where the potential production thereof exceeds the reasonable market demand therefrom, and that unless such proportionality is required, injustice would be done as between producers in the same pool in that drainage would occur from the less active leases or wells to the more active leases or wells, and un-

due proportion of the gas pressure would be utilized by some operators to the detriment of others and unfair discrimination would arise as between pools.

(f) The Commission further finds that the potential daily production of crude oil from the wells in Oklahoma during the month of October, 1930, is and will be approximately 3,633,478 barrels and that during the months of November and December, 1930, the said potential daily production will be 4,142,872 barrels and 4,244,294 barrels respectively, and that the daily demand for crude oil from Oklahoma is and will be approximately 550,000 barrels in October, 545,000 barrels in November and 535,000 barrels in December, 1930. That therefore, and by reason of the facts found in this order, the potential production from each of the pools and classes of pools involved in this proceeding is so far in excess of the reasonable market demand that the full potential production cannot be produced without waste.

[fol. 56] The Commission further finds that the above mentioned potential production is only that from the wells which would be permitted to produce under this and pre-existing orders of this Commission and does not include wells which by said orders are required to remain shut-in for the length of time therein prescribed; that if no restraint were placed upon producing wells or wells now completed or upon wells hereafter drilled during the months of October, November and December, the potential production of the State of Oklahoma would be much greater than that above stated and would exceed all transportation and marketing facilities and reasonable market demands to such an extent as to force large quantities of oil into earthen storage in this State and otherwise cause waste of a character prohibited by the laws of the State of Oklahoma. In order to prevent such waste, the Commission finds that it is necessary to curtail the production from the pools in this State and each of them during the said months of October, November and December, 1930, and according to the subjoined schedule showing the classes of pools to be prorated, the potential production of each, the estimated daily production of each under proration and the percentage of potential production allowable in each pool and the resulting, total production, under proration, for the said three (3) months period.

[fol. 57] Suggested Potential and Allowed Production of Crude Oil—State of Oklahoma
Proration Schedule**—October 1, 1930, to December 31, 1930

	October		November		December	
	Estimated Potential	Estimated Production	Estimated Potential	Estimated Production	Estimated Potential	Estimated Production
Class A Pools	259,280	202,965	257,040	201,770	254,950	200,725
Class B:						
Allen (Wilcox)	8,825	4,413	8,335	4,168	7,920	3,960
Allen (Cromwell)	17,389	8,695	16,867	8,433	16,361	8,180
Bowlegs	27,477	13,734	26,653	13,326	25,853	12,927
Earlsboro (proper)	27,805	13,903	26,971	13,485	26,162	13,081
Earlsboro Townsite	10,000	5,000	9,700	4,850	9,400	4,700
Little River	45,132	22,566	43,778	21,889	42,465	21,232
East Little River	23,482	11,741	22,700	11,350	22,000	11,000
Marshall-Lovell	5,000	2,500	5,000	2,500	4,500	2,250
Maud	5,541	2,771	5,375	2,688	5,214	2,607
Mission	14,233	7,117	13,806	6,903	13,392	6,696
Sasakwa	10,300	5,150	9,785	4,893	9,295	4,648
Searight	12,809	6,405	12,425	6,212	12,052	6,026
Seminole	27,616	13,808	26,788	13,394	25,984	12,992
East Seminole	4,021	2,011	3,900	1,950	3,783	1,892
St. Louis	37,803	18,902	36,669	18,334	35,569	17,784
Subtotal	277,433	138,716	268,752	134,375	259,950	129,975
Class C:						
Carr City	22,415	6,936	25,965	7,783	28,510	8,380
South Earlsboro	36,000	9,000	33,000	8,250	30,000	7,500
Subtotal	58,415	15,936	58,965	16,033	58,510	15,880

Class D:						
Konawa	89,500	18,188	88,365	17,933	84,234	17,117
Class E:						
East Earlsboro	45,000	15,000	43,000	15,000	40,000	15,000
West Asher-Wanette	50,000	7,200	45,000	7,200	41,000	7,200
Subtotal	95,000	22,200	88,000	22,200	81,000	22,200
Class F:						
Tatums	18,000	4,000	15,000	4,200	12,000	4,000
Chandler	25,000	2,500	25,000	2,500	25,000	2,500
Subtotal	43,000	6,500	40,000	6,500	37,000	6,500
Class G:						
West Perry	1,200	600	1,150	600	1,100	600
Orlando	850	400	825	400	800	400
Twp. 20 N., R. 4 W	800	400	775	400	750	400
Subtotal	2,850	1,400	2,750	1,400	2,650	1,400
Class H:						
Oklahoma City	2,800,000	131,095	3,319,000	134,589	3,446,000	131,003
Wildcat Wells	3,000	3,000	10,000	200	10,000	200
New Wells (Outside of Oklahoma City)	Free Production.					
For Testing	5,000	5,000	5,000	5,000	5,000	5,000
Unprorated Small Wells in Prorated Areas	5,000	5,000	5,000	5,000	5,000	5,000
Total State	3,638,478	550,000	4,142,872	545,000	4,244,294	535,000

**NOTE.—See detailed description of curtailment procedure for each class of pools.

[fol. 58] (g) The Commission finds from the evidence that the curtailment and the varying percentages as between pools prescribed in the schedule contained in paragraph (f) herein are necessary and reasonable in order to reduce production in this State to the reasonable market demand and in a manner least injurious to the producers and royalty owners as a whole, and in order to prevent unfair and unreasonable discrimination in favor of any one pool or common source of supply as against another.

The Commission finds that the varying percentages of curtailment as between pools as set forth in paragraph (f) of this order are necessary, fair and reasonable because of the peculiar conditions in each case and in this, to-wit: that said pools are not all served in common by the same pipelines and purchasers; that the reasonable market demand from certain of them is greater in proportion to potential production than in the case of others; that some of them are older than others and have been prorated longer than others, under orders of the Corporation Commission, with a consequent greater reduction in potential flow and smaller possible production per well per day and are, therefore, accorded a higher percentage allowable production; that in many cases individual pools are served by local purchasers whose facilities cannot be extended to the others, and in certain of the pools the sand and water conditions prevent as great curtailment as is possible in others, and that in certain pools there is a more intensive drilling campaign and wells of larger capacity than in others. The Commission also finds that in the making of said schedule in paragraph (f) the producers and purchasers in all of said pools were consulted and meetings of said producers and purchasers were held at which all of the foregoing factors were considered and that said schedule represents the consensus of opinion of said producers and purchasers as to reasonableness of arrangement, necessity and convenience of producers and purchasers and equity as between the various common sources of supply.

The Commission finds that the basis of classification of pools for the application of the varying percentages of curtailment as shown by the schedule in paragraph (f) herein is the existing relation between the potential production of each pool and the amount of crude oil which can

be produced from said pool without waste. That because said relation is not the same in all the pools involved, the percentages of curtailment must necessarily vary as between pools. A uniform percentage applied to all pools would result in the permitted production from some of them being less than the reasonable market demand therefrom, while in others the permitted production resulting from such uniform percentage would exceed the amount which could be produced therefrom without waste.

(h) The Corporation Commission finds that by virtue of the facts, as herein set forth, (1) that it is necessary to curtail production in each of the pools herein mentioned in order to reduce the output of the State to reasonable market demands from the State as a whole, and thus to avoid waste, and (2) that the plan and schedule of percentages as contained in paragraph (f) are necessary to be observed in the case of each lease in order to prevent the inequitable or unfair taking by any person, firm or corporation from any one of said pools as a common source of supply and to pre-
[fol. 59] vent unreasonable discrimination in favor of any one such common source of supply as against another, and by virtue of the further fact that no one purchaser nor all of the purchasers together and no one pipeline or transporter nor all pipelines and transporters together is or are able or willing to purchase and/or transport all of the oil from all of said pools, it is necessary that each purchaser and transporter from each of said pools conform and apportion his takin-s from each lease and pool to the percentages of potential output applicable thereto as set forth in the said schedule contained in paragraph (f) herein.

And said Commission further finds that if any purchaser or transporter should fail or refuse to so conform but should violate the plan as set forth in paragraph (f) by taking more than the due proportion as fixed by said plan, from any lease or leases in the said prorated areas, his action would have the immediate effect of discriminating against and of doing injury to surrounding owners by drainage and disproportionate use of the gas pressure and of creating discrimination as between pools and would have the further effect of hindering, impeding or disrupting the whole plan or scheme for the prevention of waste as

adopted and promulgated by the Corporation Commission. For these reasons the purchasers and transporters now serving each or any of said pools, or who may hereafter do so, are hereby made parties to this proceeding and said purchasers and transporters are hereby prohibited from violating the rules and regulations and orders of the Commission as herein set forth or in any manner aiding or abetting any producer in so doing.

(i) The Corporation Commission further finds that in addition to the prevention of waste of crude oil, the establishment of the curtailment plan in this order set forth will tend to conserve natural gas and gas pressure in the pools to which it shall be applied.

(j) The Commission finds that since the making and issuance of Order 5189 in Cause No. 10,146, the potential production of the Oklahoma City pool has increased to approximately 2,800,000 barrels per day and, by reason of the large number of wells now drilling or awaiting production in said pool, such potential will probably increase to 3,319,000 barrels per day in November and to 3,446,000 barrels per day in December. That the reasonable market demand for oil in said pool heretofore existing has been so small in proportion to the present potential production that it is necessary, if possible, that the market outlet from said pool be increased in order to prevent unreasonable discrimination against said Oklahoma City pool. In this connection, the Commission finds that a number of purchasing companies desire to and have already reduced the amount of their purchases in the so-called older pools in the State not heretofore prorated under order of this Commission, and that said purchasers desire to purchase a greater amount of oil in the Oklahoma City pool than they have heretofore taken. The Commission further finds that, by reason of the readjustment of purchases as herein stated as between pools not heretofore prorated and the Oklahoma City pool, the potential production of said pools not heretofore prorated will exceed the reasonable market demand therefrom, and that it is necessary to now prorate said older pools, which are hereby designated as "Class A" pools. That it is necessary to curtail the output from said "Class A" pools 50% of the excess in each pool over and

above an average of 5 barrels per well per day and that this curtailment is necessary in order to avoid discrimination as between the said "Class A" pools themselves and [fol. 60] as between the said "Class A" pools and the other pools of the State and to prevent waste of crude oil in said "Class A" pools and to protect the coequal rights of the producers therein.

The Commission further finds from the evidence that the best manner of applying curtailment of said "Class A" pools, is as follows, to-wit: That in each of said "Class A" pools all leases therein where the per well average per day is five barrels or less should be exempted from curtailment or proration because to curtail or prorate said 5 barrel well or wells making less than 5 barrels would be to reduce the gross income therefrom below the cost of operation and thus compel their abandonment which would constitute a waste of an irreplaceable natural resources, and for the further reason that many of such wells produce water along with the oil and it is necessary to pump them each dau in order to prevent their injury by water encroachment. That in each of saic "Class A" pools each lease should receive said exemption up to an average of 5 barrels per well per day but in the case of those leases where the average per well exceeds 5 barrels per day, the excess should be curtailed 50% so that, for example, an 80 acre lease with 8 wells thereon which is making a total of 100 barrels per day should be curtailed and prorated so that it would receive an exemption of 40 barrels and the remaining 60 barrels of potential should be cut to 30 barrels, so that the total allowable production from such lease would be 70 barrels per day. In this manner the Commission estimates that the production from the hitherto unprorated fields will be decreased approximately 50,000 barrels per day and to the reasonable market demand therefrom and that this curtailment will fall approximately 10,000 wells out of a total of approximately 60,000 wells hitherto not prorated, and that of said 60,000 wells, the 50,000 smallest wells will remain uncurtailed under this plan and for the reasons above stated.

The Commission finds that the full potential production from the Oklahoma City pool cannot be produced without waste, including physical waste and waste incident to the

production of crude oil or petroleum in excess of the reasonable market demand, and that the reasonable market demand from said pool at the present time is approximately 131,095 barrels per day, and that in the month of November said reasonable market demand from said pool will be approximately 134,589 barrels per day, and that in the month of December the reasonable market demand from said pool will be 131,003 barrels per day, and that the market demand herein named is somewhat contingent upon transference by the purchasing companies of purchasing power from the "Class A" pools herein to the Oklahoma City pool and upon ability to transfer pipeline connections, and the Commission therefore finds that the orders, rules and regulations should be made sufficiently flexible so that increases or decreases in market demand from said Oklahoma City pool and increases or decreases in potential production therefrom, can be recognized by ancillary orders of the Commission, and that for this purpose the Umpire and Operators' Committee should be instructed to compute from time to time, the rate of curtailment necessary in order to conform the permitted production to the reasonable market demand from the said Oklahoma City pool and to report the same to the Commission with the facts in support thereof as a basis for such ancillary order; it being understood, however, that whatever reasonable market demand develops for crude oil from the Oklahoma City pool shall be prorated among all the producing wells therein, so that each well will be permitted to produce its proportionate share of the amount of oil that may be produced from said field without waste.

[fol. 61] (k) The Commission finds that the potential production of the State of Oklahoma now so far exceeds the reasonable market demand from said State as a whole, and the resulting curtailment of producing wells has become so drastic and severe, that it would be inequitable and unfair and discriminatory to hereafter permit full production from wild-cat wells hereafter drilled which open new pools, sands or zones, and the Commission therefore finds that all wild-cat wells or wells opening new pools, sands or zones completed or brought into production after the date of this order should be limited to a production of 50 barrels per well per day, after one day open flow for test, and until otherwise ordered by the Corporation Commission.

The Corporation Commission has examined many witnesses in this case, and has afforded an opportunity for everyone interested to be heard. There has been some contention that proration of the Oklahoma oil pools is a scheme or device to limit production and to maintain the price of crude oil, but this Commission asserts that its orders have been and are now based solely upon the purpose to prevent waste of crude oil in the various oil pools of the state, and, in the process of so doing, to require ratable or proportional taking from each of the wells in a common source of supply or pool where curtailment of production from the pool as a whole is necessary to prevent waste, and that this Commission has exercised its independent judgment in prescribing the proration orders, and has not attempted to influence price of crude oil or refined products, and that if any such effect has occurred it is purely incidental and not intended. In this connection the Commission finds that from 65% to 75% of the crude oil sold from the wells in Oklahoma is sold to refiners and purchasers who take it outside of the State of Oklahoma, and which oil so sold goes into the world market for petroleum in competition with crude oil from Venezuela, Mexico, Columbia, Peru, California, New Mexico, Kansas, Texas, Louisiana, Arkansas, and other producing areas, and that the price at which it is sold is fixed, not by this Commission, but by the free play of competition and by the relation between supply and demand in the said world market; that the market price for said oil is evidenced by the price regularly posted and offered by the principal purchasers of oil, and that practically all of the oil that is sold in Oklahoma is sold at said regular posted market price, and that there is no evidence that proration in Oklahoma has had any effect upon said price.

The Commission further finds that proration has been in effect in various oil pools in the State of Oklahoma almost continuously from October 1926, to the present time, and that during said period the regular posted market price for crude oil in this state has declined about 40% and has not been maintained or affected by proration in this state so far as this Commission is able to determine; that there is plenty of crude oil now available for purchase by refiners in the State of Oklahoma and the Commission has taken every precaution to make its orders so flexible that no rea-

sonable market demand for crude oil from any pool in the State shall be denied.

There was evidence adduced at the hearing tending to show that there is a difference of opinion among operators and experts as to whether time proration, as applied in the Oklahoma City field, or proration based upon a percentage of daily potential production, is the better method of secur- [fol. 62] ing proportional taking without injury to the wells. This Commission has provided in its orders a degree of flexibility by which either time proration or what is known as percentage proration might be utilized in each of the pools involved upon application of any operators, or upon application of the Umpire or Operators' Committee supported by proper evidence. The operators in the Oklahoma City pool have, up to this time, unanimously recommended to this Commission that proration in that pool be applied according to the time method, and it has been for this reason that time proration has been in effect in the Oklahoma City pool. The Commission cannot find from the evidence now before it that a change from time proration to percentage proration should be ordered, nor whether a combination of the two methods might be utilized with advantage in said pool. The Commission therefore sets this particular matter for hearing befor- this Commission at 10 o'clock A. M. on the 5th day of November, 1930, and will give all operators in the field an opportunity to be heard on the question whether such change should be made. In the meantime, and until otherwise ordered by the Commission, time proration will be continued in the Oklahoma City field.

The Commission finds from the evidence that crude oil and natural gas occur together, or in close proximity to each other in the ground, and that there is a common gas pressure throughout a common pool which exerts an energy or force to move the gas and oil towart the point of least resistance, and that therefore when wells are drilled into a pool or structure the oil and gas become migratory, and, having the power of self transmission, will move from one property to another, underground, in such pool; and that when some of the wells in such a common pool are permitted to produce at a greater proportion of their capacity than others, drainage occurs from the less active to the more active wells, if such disproportionate condition is continued,

that in the Oklahoma City pool there is a heavy gas pressure which would cause such drainage should disproportionate taking of crude oil and gas be permitted that the history of the oil producing business in this and other surrounding states shows that in the case of flush pools where proportional taking from the wells is not enforced, and where the full production from the pool cannot be taken, either because of inadequate transportation facilities or because the reasonable market demand does not equal the potential production, producers who do not have physical or market outlets will be forced to produce their well to capacity in order to prevent drainage of the oil to the wells of such producers as do have adequate physical or market outlets. In such cases, in the absence of adequate steel storage available to every producer, some of them will flow the oil into earthen pits. This has occurred many times in the oil pools in Oklahoma and surrounding states and has always caused actual physical waste of the crude oil through evaporation, leakage, and washouts to a very large extent. The Commission finds that this would be the case in the Oklahoma City field, and in many other fields of the state if production were not curtailed as provided in this order.

The Commission further finds that to permit the wells in the Oklahoma City field to flow wide open and continuously, without limitation as to time, would cause serious underground waste.

A protest has been filed by the producers and refiners in Stephens County against the application of this order to the wells in said county, and some evidence has been introduced tending to show that at least some of the wells in the pools in said county produce such large quantities of salt water that they might be injured by enforcement of the degree of curtailment provided for in the case of the "Class [fol. 63] A" pools. The Commission is unable to determine from the evidence now before it whether any or all of the pools and leases in Stephens County should be exempted from proration on account of possible injury to the wells, or on account of the state of the market demands in said county, and for these reasons the Commission will hold this order in abeyance as to the oil pools in Stephens County until a more particular examination of the wells and leases, and of the reasonable market demand for crude oil from said pools can be made under the supervision of this Com-

mission; and, to that end, the Umpire and the Chief Oil & Gas Conservation Officer, and the Operator's Committee, are hereby directed to make an immediate and detailed examination of the producing and operating conditions in said pools, and with respect to the market demand from the pools in said county, and to report the same to this Commission on or before 10 o'clock A. M., November 7th, 1930, at which time this Commission will hear the reports of the said Umpire, Agents and Operator's Committee, and any interested person with reference to the application of the order to said Stephens County pools, any modification thereof that should be made, or any exemption that should be granted.

The Corporation Commission further finds that the allegations of the supplemental petition filed herein are true and correct, and that accordingly these conditions of waste now exist in said pools, and commission of waste is imminent, and the same should be prohibited and prevented, and the following rules and regulations are necessary, reasonable and approprite for that purpose.

It is therefore ordered by the Corporation Commission of the State of Oklahoma as follows:

1

The areas to be subjected to the rules and regulations of the Corporation Commission are all of the oil pools in the State of Oklahoma, and such new pools, sands or zones as may come into production during October, November and December, 1930.

2

Ray M. Collins is hereby appointed as Umpire and Agent of the Commission to enforce the rules and regulations herein made and he is hereby authorized to employ as many assistants as he shall deem necessary.

3

Where percentage proration is applied a gauge of producing wells shall be taken in the following manner: the gauge to determine potential shall be taken by each operator in the pool in respect of the lease or leases owned by him therein and then producing, such gauge to be taken

between the hours of seven A. M. on the day set by the Order of the Commission, and seven A. M. on the following day. Prior to the taking of such gauge and in respect of each producing lease covered hereby the Umpire shall appont a representative of an operator owning a lease adjoining the particular property to be gauged, and shall notify the operator whose property is to be gauged of the name of the representative, such notification to be given prior to the taking of such gauge. It shall be the positive [fol. 64] duty of such representative to remain on the lease that is being gauged throughout the entire day that the gauge is being taken to witness the gauging of the production therefrom; and immediately upon the completion of such gauge, such witness and the operator whose property was gauged shall file a written statement with the Umpire showing the production of said lease, and of each well thereon for the day said gauge is taken. The production so shown shall constitute the potential for said lease until the next gauge is taken. During the time this Order is in force a similar gauge of each property shall be taken from time to time as the Umpire and Operators' Committee may designate but not less than onec each month, except that in the entire Greater Seminole area, aside from South Earlsboro, East Earlsboro, East Little River, Sasakwa, Konawa, West Asher-Wanette, Earlsboro Townsite and Wilcox wells in Allen pools, and in the "Class A" pools, the gauge may, upon direction of the Umpire, be determined by applying the proper decline curve for each lease so gauged.

Oklahoma oil production shall be limited to an average of approximately 550,000 barrels per day during October 1930; 545,000 barrels per day during November 1930, and 535,000 barrels per day during December 1930; said figures represent the estimated demand during said period and same shall be used as the basis for the limitation of production in this State until the Corporation Commission shall find from evidence that the same shall be changed.

Each person, firm or corporation having the right to drill into and produce oil from any of the flush or semi-flush pools or areas and extensions thereof that are covered by this Order may take from such pool or area and extension thereof only such proportion of all crude oil and pe-

troleum that may be produced therefrom under this Order as the production of the well or wells of such person, firm or corporation in said pool or area bears to the total potential production of such pool or area. In the case of each such pool or area the Umpire and the Operators' Committee for said pool or area shall recommend whether the production shall be curtailed on a time basis or on the basis of a percentage of potential daily production but such decision shall be reported by the Umpire to this Commission for approval and in no event shall any pool and its extensions be permitted to produce more than its allowable output as fixed by this Order.

The Commission may, by ancillary order, temporarily reduce the allowable percentage of production for any pool upon the recommendation of the Umpire and Operators' Committee that it is necessary to do so in order to allow producers who may be overproduced to catch up with their respective quotas.

5

Where shortage and overages have occur-ed under previous orders of this Commission, the same shall be carried forward and adjusted during the month of October. Any lease showing an overage of one barrel or more at November 1st, or at the first day of any month thereafter during the life of this Order shall be immediately reported by the Umpire under oath to the Corporation Commission as a basis for citation and such report shall contain in addition to the location of the property and the amount of the overage, the names and addresses of the lessee, the purchaser of the oil and the transporter. Leases which are being gauged according to a decline curve and showing a shortage at the end of any month of more than two days allowed production shall take as their potential for the following month the daily average production of the last ten days of the month. And in the case of such leases, shortages of two days allowable production or less shall be credited on the next month's allowed production. [fol. 65] To establish equality between producing wells and drilling wells, each well now drilling in any of said areas, or which may be commenced in said areas or in any new areas prior to December 31, 1930, shall take a delay

prior to being brought into production, equal to the accumulated shut-in time and accumulated equivalent time resulting from pinching of producing wells from the beginning of the proration period in each pool, said period of delay to be computed in each instance after allowing seven (7) days for the cement to set: Provided the maximum shut-in time in each of said pools shall be according to the following schedule:

Area	No. of days cement to set	No. of days of open flow for test	Days shutdown	Total
Oklahoma City	7	1	57	65
East Earlsboro	7	1	41	49
Konawa	7	1	16	24
West Asher-Wanette	7	1	16	24
Marshall-Lovell	7	1	16	24
South Earlsboro	7	1	16	24
Seminole, et al	7	1	16	24

Previous orders of the Corporation Commission as to wells now completed but not on production shall be continued in effect as to the shutdown requirements therein. Wildcat wells hereafter completed and opening new pools, sands, or zones shall have one day of open flow for test and thereafter the production therefrom, together with that from subsequently completed wells therein, shall be pinched in to 50 barrels per well per day until further order of the Corporation Commission. A wildcat well shall be considered as one outside of a per-existing drainage area.

7.

That all purchasers and pipeline carriers of oil in the State of Oklahoma be and they are hereby forbidden to aid or abet producers in violating this Order by purchasing or carrying oil produced in violation of these orders of the Commission.

8

Attention of the producers in each pool is hereby directed to Section 7959, Compiled Oklahoma Statutes, which provides that any person, firm or corporation may institute proceedings before the Corporation Commission or apply for a hearing upon any question relating to the enforcement of the conservation laws. In this connection, producers in each of the pools in Oklahoma are invited to appear before the Commission at any time that they may deem themselves pecul-arly injured by the administration.

of this order in any particular or in any manner discriminated against, and the Commission will hear and act upon the evidence disclosed in such hearing. Notice should be given to the Umpire and Operators' Committee of the intention to thus appear before the Commission on any such question.

9

Class A Pools: All oil pools in the State not heretofore prorated under the order of the Corporation Commission No. 5189, 5246 and 5292 shall be designated as "Class A" pools. All leases in said pools which have a potential production in excess of an average of 5 barrels per well per day shall be curtailed 50% of the excess over such 5 barrels per well per day average. In all leases in said pools [fol. 66] an exemption from proration of an average of 5 barrels per well per day shall be allowed. The following is an illustration of what is intended by this regulation, to-wit: an 80-acre lease with 8 wells thereon which is making a total of 100 barrels per day will be allowed an exemption of 40 barrels and the remaining 60 barrels will be cut to 30 barrels so that the total allowable production from the lease as a whole will be 70 barrels. The pipelines and purchasing companies are hereby directed to observe and enforce this regulation in said "Class A" pools and to assist the Umpire and Operators' Committee in carrying out the requirements hereof.

10

Class B Pools: The following semi-flush pools shall be placed in "Class B", to-wit: Allen (Wilcox), Allen (Cromwell), Bowlegs, Earlsboro, (proper), Earlsboro Townsite, Little River, East Little River, Marshall-Loyell, Maud, Mission, Sasakwa, Searight, Seminole, East Seminole and St. Louis.

These pools shall be curtailed in the following manner:

Allowed production 50% of potential production with this qualification—that in the case of any lease not capable of making in excess of 50 barrels per day, it shall be allowed an exemption of 5 barrels per well per day and the curtailment of 50% shall only be applied to the excess over an average per well of 5 barrels per day.

11

Class C Pools: The following pools shall be placed in "Class C", to-wit: Carr City pool with its new extension and South Earlsboro pool. These pools, to recognize the market outlet and to conform to the peculiar conditions therein shall be curtailed according to the following schedule:

Average barrels per well per lease:		
300 barrels or more, allowed production	25%	
200 to 300 barrels, " "	30%	not over 75 bb.
100 to 200 " " "	37½%	" " 60 "
Less than 100 bbls., " "	50%	

Also, in these pools where a lease is not capable of making more than 50 barrels per day, there shall be allowed an exemption of 5 barrels per well per day as in "Class B".

12

Class D Pools: Konawa Pool. There being no other pool in the State — similar position to that of Konawa, it is placed in a class by itself and shall be prorated on the following schedule:

Average barrels per well per lease:		
400 bbls. or more., allowed production	18¾%	
300 to 400 bbls., " "	22½%	not over 75 bbls.
200 to 300 " " "	26¼%	" " 67 "
100 to 200 " " "	37½%	" " 53 "
Less than 100 bbls.		

[fol. 67] Also, in this pool, leases not capable of making over 50 barrels per day shall be granted an exemption of 5 barrels per well per day as in "Class B".

Class E Pools: East Earlsboro and West Asher-Wanette. Owning to the changing relation between the potential production and the market outlet from these pools, it is ordered that each of them be limited in production to a stated figure representing the present market outlet which, in the case of the East Earlsboro pool, is 15,000 barrels per day, and in the case of the West Asher-Wanette pool is 7,200 barrels per day. And that the Umpire and Operators' Committee be required to ascertain and compute from time to time the percentage of potentual production which may be allowed to conform the permitted

poroduction to the market outlet and to report the same to the Corporation Commission as the basis for an ancillary order. But in these pools the 5 barrel per well exemption in leases not capable of makin- in excess of 50 barrels per day shall apply as in "Class B".

14

Class F Pools: Tatums and Chandler Pools. Both of these pools have new extension with potentially large wells along with old, small wells. Having in view the present market outlet from these pools, it is ordered that they be curtailed in the following manner:

Wells with a potential daily production of 400 barrels or more shall be allowed 100 barrels daily. Wells with a daily potential of from 100 barrels to 400 barrels shall be allowed 50 barrels per day. Wells with a daily potential production of less than 100 barrels shall be allowed an exemption of 5 barrels per day and be curtailed 50% of the excess over 5 barrels.

Provided: That the Umpire and Operators' Committee shall, from time to time, make a survey of the market outlet from each of said pools and in case the market demand increases, this fact, together with suggested changes in the percentage of allowable production, shall be reported to the Commission as the basis for an ancillary order.

15

Class G Pools: West Perry, Orlando and Township 20 North, Range 4 West. These new pools' unascertained possibilities are now being curtailed on the basis of the following maximum allowed output which shall be continued until otherwise ordered by the Commission, to-wit:

West Perry	600	barrels	daily
Orlando	400	"	"
Twp. 20 R. 4 W	400	"	"

16

Class H Pools: The Oklahoma City pool. The Corporation Commission allocates to the Oklahoma City pool an outlet of 131,095 barrels per day in October, 134,589 barrels per day in November and 131,003 barrels per day in

December. This nomination of the total permitted production of the pool shall serve as a basis for fixing the proportional production of the wells in said pool until the [fol. 68] Commission finds from evidence that a greater or less reasonable market demand obtains. The Umpire and Operators' Committee are directed to compute the percentage of proration from time to time as found necessary to conform the permitted production to the reasonable market demand and to report their findings to the Commission as a basis for an ancillary order.

It is further ordered that whatever reasonable market demand from the pool shall exist at any time shall be prorated and allocated among all the producing wells, so that each well shall receive its prorata share of the reasonable market demand, and the pipeline companies are hereby directed to cooperate with the Umpire in so arranging pipe line connections that there shall be no discrimination in favor of one producer and against another.

17

The Commission will, in separate order, name for the various pools embraced within the terms and provisions of this Order, Operators' Committees for each of said respective pools and territories embraced herein. This will be necessary for the reason that the law required the approval of His Excellency, the Governor of the State of Oklahoma, in the appointment and designation of such officials.

Jurisdiction of this cause is hereby retained by the Corporation Commission, and notice is hereby given that supplemental and ancillary orders may be made herein from time to time as required by new developments and as instructions to the Umpire and Operators' Committee. When in the judgment of the Umpire or any Operators' Committee any adjustment or fixing of percentages of well production as provided in this order shall be proper, or as any such supplemental or ancillary order shall become necessary, the facts supporting the necessity therefor and the reasonableness thereof shall be reported to the Commission for approval, and no exception to those rules and regulations shall be allowed by the Umpire or Operators' Committee, nor shall any adjustment of percentages or

well production become effective, unless approved by such an ancillary order of this Commission. Should the demand for crude oil from the State of Oklahoma increase prior to December 31, 1930, to such an extent as to permit a greater outlet from the pools herein mentioned, the Umpire shall report the facts to the Commission, together with the recommended percentages, and the Corporation Commission hereby gives notice that such revised percentages may be substituted for the percentages provided for in this order.

Done at Oklahoma City this the 28th day of October, 1930.

Corporation Commission of Oklahoma. (Signed) C. C. Childers, Chairman. (Signed) Fred Capshaw, Commissioner. (Signed) E. R. Hughes, Commissioner.

Attest: (Signed) E. D. Hicks, Jr., Secy. (Seal.)

[File endorsement omitted.]

[fol. 69] IN UNITED STATES DISTRICT COURT

AMENDMENT TO SECOND AMENDED AND SUPPLEMENTAL BILL—Filed Jan. 2, 1931

Comes now plaintiff and by leave of Court first had herewith amends its Second Amended and Supplemental Bill so as to further allege that the defendants did on December 30, 1930, make and enter an order extending and modifying order No. 5369 to and including March 31, 1931 and reserving therein jurisdiction to make other and further orders in said cause before said Corporation Commission, and said defendants also made on December 30, 1930, a supplemental separate order pertaining to the Oklahoma City field, copies of both of which orders are hereto attached as Exhibits X and Y and Z and plaintiff further amends its said Second Amended and Supplemental Bill so as to make all the allegations therein leveled against the validity of the Corporation Commission's orders also allegations against the validity and constitutionality of the orders shown by Ex-

hibits X and Y and Z hereto attached and plaintiff alleges that the orders shown by Exhibits X and Y hereto are void and invalid for the same reasons set forth in its Second Amended and Supplemental Bill as reasons for the invalidity of the former orders of the Commission.

George S. Ramsey, Edgar A. de Meules, Horace G. McKeever, A. K. Swann, Attorneys for Champlin Refining Company.

[fol. 70] EXHIBIT "X"

Certificate

STATE OF OKLAHOMA,
Oklahoma County, ss:

To all to whom these presents shall come, Greetings:

I, E. D. Hicks, Jr., Secretary of the Corporation Commission of Oklahoma, do hereby certify that the following hereto attached is a true and correct copy of order on file in this office of the Corporation Commission of Oklahoma, covering Order No. 5413 under Cause No. 10326, the original of which is now on file and matter of record of this office.

In testimony whereof I hereunto set my hand and affix the seal of the Corporation Commission of Oklahoma.

Done in Oklahoma City this the 1st day of January, 1931.

E. D. Hicks, Jr., Secretary Corporation Commission of Oklahoma. (Seal.)

[fol. 71] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause No. 10326. Order No. 5413

In the Matter of the Application of WIRT FRANKLIN for Rules and Regulations to be Established by the Commission to Prevent Waste of Petroleum in the Producing Oil Fields of the State of Oklahoma

Order Extending and Modifying Order No. 5369

Comes now petitioner herein and various and sundry producers of oil in the State of Oklahoma, and this matter

having been set for hearing on this 29th day of December, 1930, and the Commission having heard and considered the evidence of the petitioner and sundry other persons, and the evidence of any and all persons opposing the supplemental petition herein, and the Commission having made an investigation of the facts alleged and of the conditions in the oil fields of Oklahoma, and being fully advised in the premises, finds as follows:

(a) That areas to be covered by the rules and regulations herein prayed for are all of the oil producing areas in the State of Oklahoma and those new sands or areas which may be brought into production during the months of January, February and March, 1931.

(b) That notice by publication on all persons or classes interested in this proceeding and in the rules and regulations to be established hereby has been given, as required by law, in a newspaper of general circulation in this State, and that, in addition, reasonable notice in writing has been served personally on all persons, firms and corporations known to petitioner to be interested in this proceeding and due proof of service of notice has been made and filed herein.

(c) The Corporation Commission finds from the evidence that there is an overproduction of crude oil in the State of Oklaho- attended by waste of gas and of gas pressure and that the producers of crude oil in the oil pools of Oklahoma are threatening to and will, unless restrained by the rules and regulations of the Corporation Commission, commit physical waste of crude oil, economic wast- underground waste, surface waste and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands, and [fol. 72] that the commission of such waste is so imminent in each of the areas involved in this proceeding that orders, rules and regulations of this Commission are necessary in order to prevent such waste.

The Commission further finds that there is a general overproduction and importation of crude and refined petroleum in the United States, and that this fact tends to reduce the amount of crude oil that can be produced in the State of Oklahoma without waste; that the potential production of crude oil in the United States is at this time ap-

proximately 10,000,000 barrels per day, and imports of crude and refined petroleum aggregate about 300,000 barrels per day, thus creating a total possible current supply of 10,300,000 barrels per day as against an approximate daily demand for domestic use and export of 2,500,000 barrels per day. That by reason of this great oversupply and threatened waste, potential production is now being curtailed in Oklahoma and other producing regions, and unless there is a continuance of curtailment of production in the areas involved herein, there will be an increase in waste in this State and an undue exhaustion of our oil resources. The Commission finds that this petroleum situation constitutes a grave state emergency and that the laws of the State of Oklahoma and the powers of the Corporation Commission should be availed of to remove the same.

(d) The Commission further finds from the evidence that, in addition to the excess of potential and actual production and imports over current demand, there are stocks of petroleum on hand in the United States aggregating more than 670,000,000 barrels, which stocks are excessive and beyond the needs of the petroleum industry. That by reason of the excessive supply thus indicated, the purchasers of crude oil in Oklahoma are unwilling to purchase crude oil in Oklahoma for storage purposes in any amount that would be adequate to take care of the surplus of potential production over current demand and that, therefore, there is not sufficient empty tankage available to take care of said excess and unless production in Oklahoma is curtailed, much oil would necessarily go to earthen storage where it would evaporate and escape and thus be wasted.

(e) The Commission finds from the evidence that in order to curtail the production of crude oil in Oklahoma in a manner to prevent the commission of waste and to protect the coequal rights of producers in each pool, it will be ne-[Vol. 73] cessary to enforce proportionality of taking from the wells and leases in each of the pools where the potential production thereof exceeds the reasonable market demand therefrom, and that unless such proportionality is required, injustice would be done as between producers in the same pool in that drainage would occur from the less active leases or wells to the more active leases or wells, and an

undue proportion of the gas pressure would be utilized by some operators to the detriment of others and unfair discrimination would arise as between pools.

(f) The Commission further finds that the rated potential daily production of crude oil from the wells in Oklahoma during the month of January, 1931, is and will be approximately 6,252,219 barels and that during the months of February and March, 1931, the said rated potential daily production will be 6,686,564 barrels and 7,263,077 barrels respectively, and that the daily demand for crude oil from Oklahoma during the months of January, February and March, 1931, will range between 465,000 barrels per day in January, which the Commission estimates as the probably demand, and 506,095 bbls. per day, which is the maximum potential demand, as hereinafter explained, and that in the month of February the estimated probable demand is 469,000 bbls. per day, with a maximum potential demand of 506,550 bbls. per day, and in March the probable demand will be 470,000 bbls. per day, with a maximum potential demand of 500,010 bbls. per day. Said distinction between probable demand and maximum potential demand arises from the uncertainty of the market outlet from what is known as the "Class A" pools, as described in the Order of October 28, 1930. The Prairie Oil & Gas Co., having announced that it would withdraw as a purchaser of oil on Jan. 1, 1931, if said withdrawal is carried out it would leave the demand from the "Class A" pools at 175,905 bbls. per day, approximately, but if said "Class A" pools could reestablish their market it would potentially be approximately 217,000 bbls. per day in the month of January, and this same relative difference between the demand as now appears probable and that which might possibly be established would account for the difference in the total statewide demand as above referred to. That therefore, and by reason of the facts found in this order, the potential production from each of the pools and classes of pools involved in this proceeding is so far in excess of the reasonable market demand that the full potential production cannot be produced without waste.

The Commission further finds that if no restraint were placed upon producing wells or wells now completed or upon wells hereafter drilled during the months of January, February and March 1931, the potential production of the

State of Oklahoma would be much greater than that above stated and would exceed all transportation and marketing facilities and reasonable market demands to such an extent as to force large quantities of oil into earthen storage in this State and, otherwise cause waste of a character prohibited by the laws of the State of Oklahoma. In order to prevent such waste, the Commission finds that it is neces- [fol. 74] sary to curtail the production from the pools in this State and each of them during the said months of January, February and March, 1931, and according to the subjoined schedules showing the classes of pools to be prorated, the potential production of each, the estimated daily production of each under proration and the resulting total production, under proration, for the said three (3) months period:

	Estimated potential	Maximum potential demand	Estimated probable demand
January:			
Class A	247,000	217,000	175,905
Oklahoma City	5,388,298	85,000	85,000
Outside	616,921	204,095	204,095
Total State	6,252,219	506,095	465,000
February:			
Class A	243,295	213,615	176,175
Oklahoma City	5,838,804	90,000	90,000
Outside	604,465	202,825	202,825
Total State	6,686,564	506,440	469,000
March:			
Class A	239,646	210,646	180,636
Oklahoma City	6,411,459	90,000	90,000
Outside	611,972	199,364	199,364
Total State	7,263,077	500,010	470,000

[fol. 75] Suggested Potential and Allowed Production of Crude Oil, State of Oklahoma
Proration Schedule—January 1, 1931, to March 31, 1931
(Except Class A and Class H Pools)

	January		February		March	
Class B:	Estimated potential	Estimated production	Estimated potential	Estimated production	Estimated potential	Estimated production
Allen (Wilcox)	6,704	3,352	6,369	3,185	6,051	3,026
Allen (Cromwell)	16,534	8,267	16,038	8,019	15,557	7,779
Bowlegs	25,399	12,700	24,637	12,319	23,898	11,949
Earlsboro (proper)	26,239	13,120	25,452	12,726	24,688	12,344
Earlsboro (Townsite)	9,475	4,738	9,001	4,501	8,551	4,276
Little River	45,841	22,921	45,466	22,733	44,102	22,051
East Little River	21,265	10,633	20,202	10,101	19,192	9,596
Marshall-Lovell	3,658	1,829	3,548	1,774	3,442	1,721
Maud	5,316	2,658	5,157	2,579	5,002	2,501
Mission	12,664	6,332	12,284	6,142	11,915	5,958
Sasakwa	8,169	4,085	7,761	3,881	7,373	3,687
Searight	11,156	5,578	10,821	5,411	10,496	5,248
Seminole	25,816	12,908	25,042	12,521	24,291	12,146
East Seminole	3,651	1,826	3,541	1,771	3,435	1,718
St. Louis	36,294	18,147	35,705	17,853	34,634	17,317
Subtotal	258,181	129,094	251,024	125,516	242,627	121,317
Class C:						
Carr City	42,014	12,184	40,035	11,642	44,163	12,625
South Earlsboro	28,175	7,044	25,358	6,340	22,822	5,706
Subtotal	70,189	19,228	65,393	17,982	66,985	18,331

Class D:						
Konawa	67,590	12,673	65,211	12,227	61,950	11,616
Class E:						
East Earlsboro	36,466	15,000	34,643	15,000	32,911	15,000
West Asher-Wanette	53,777	7,200	58,588	7,200	61,659	7,200
West Seminole	11,373	3,000	10,236	3,000	10,236	3,000
Wewoka	40,000	4,000	40,000	4,000	60,000	4,000
Subtotal	141,616	29,200	143,467	29,200	164,806	29,200
Class F:						
Tatums	37,000	4,500	35,000	4,500	32,000	4,500
Chandler	25,600	2,500	24,320	2,500	23,104	2,500
Subtotal	62,600	7,000	59,320	7,000	55,104	7,000
Class G:						
West Perry	1,675	600	1,500	600	1,400	600
Orlando	3,671	400	3,300	400	3,000	400
Twp. 20 N., R. 4 W.	1,400	400	1,250	400	1,100	400
Subtotal	6,746	1,400	6,050	1,400	5,500	1,400
Wildcat Wells:						
New Wells (outside of Okla. City)	5,000	500	5,000	500	5,000	500
Free production for testing	3,000	3,000	5,000	5,000	5,000	5,000
Unprorated small wells in prorated areas	2,000	2,000	4,000	4,000	5,000	5,000
Total	616,921	204,095	604,465	202,825	611,972	199,364

[fol. 76] (g) The Commission finds that the order numbered 5369 and the rules and regulations adopted October 28, 1930, should be continued in force for the first quarter of 1931 as modified by this order and by such supplemental or ancillary orders as may be made by the Commission from time to time. In this connection, the Commission finds that it is characteristic of the oil producing business that the reasonable market demand and the potential production of oil pools sometimes change abruptly and frequently and it is therefore necessary that the order, rules and regulations be made sufficiently flexible to permit prompt readjustments of allowable percentages of production in order to conform the permitted production to the reasonable market demand. For these reasons the Commission would request everyone interested and instruct the umpire and operators' committees to promptly advise this Commission of such changes in order that proper ancillary or supplemental orders may be made. The purpose of the Commission is to recognize fully the reasonable market demand for each pool and not to curtail production below such demand where the transportation or marketing facilities are adequate but to allocate such market demand ratably among the producting leases therein in proportion to the potential production of each lease to the end that the co-equal rights of the producers may be protected and the waste incident to the production of oil in excess of the transportation or marketing facilities or the reasonable market demand may be prevented.

(h) The Commission finds from the evidence that the curtailment and the varying percentages as between pools prescribed in the schedules contained in paragraph (f) herein are necessary and reasonable in order to reduce production in this State to the reasonable market demand and in a manner least injurious to the producers and royalty owners as a whole, and in order to prevent unfair and unreasonable discrimination in favor of any one pool or common source of supply as against another.

The Commission finds that the varying percentages of curtailment as between pools as set forth in paragraph (f) of this order are necessary, fair and reasonable because of the peculiar conditions in each case and in this, to-wit: that said pools are not all served in common by the same pipe-

lines and purchasers; that the reasonable market demand from certain of them is greater in proportion to potential production than in the case of others; that some of them are older than others and have been prorated longer than others, under orders of the Corporation Commission with a consequent greater reduction in potential flow and smaller possible production per well per day and are, therefore, accorded a higher percentage allowable production; that in many cases individual pools are served by local purchasers [fol. 77] whose facilities cannot be extended to the others, and in certain of the pools the sand and water conditions prevent as great curtailment as is possible in others, and that in certain pools there is a more intensive drilling campaign and wells of larger capacity than in others. The Commission also finds that in the making of said schedule in paragraph (f) the producers and purchasers in all of said pools were consulted and meetings of said producers and purchasers were held at which all of the foregoing factors were considered and that said schedule represents the consensus of opinion of said producers and purchasers as to reasonableness of arrangement, necessity and convenience of producers and purchasers and equity as between the various common sources of supply under present circumstances.

The Commission finds that the basis of classification of pools for the application of the varying percentages of curtailment as shown by the schedule in paragraph (f) herein is the existing relation between the potential production of each pool and the amount of crude oil which can be produced from said pool without waste. That because said relation is not the same in all the pools involved, the percentages of curtailment must necessarily vary as between pools. A uniform percentage applied to all pools would result in the permitted production from some of them being less than the reasonable market demand therefrom, while in others the permitted production resulting from such uniform percentage would exceed the amount which could be produced therefrom without waste.

(i) The Corporation Commission further finds that in addition to the prevention of waste of crude oil, the establishment of the curtailment plan in this order set forth will tend to conserve natural gas and gas pressure in the pools to which it shall be applied.

(j) The Commission further finds from the evidence that the best manner of applying curtailment of said "Class A" pools, is as follows, to-wit: That in each of said "Class A" pools all leases therein where the per well average per day is ten barrels or less should be exempted from curtailment or proration because to curtail or prorate said ten barrel well or wells making less than ten barrels would be to reduce the output therefrom in many cases below the point of practical operation and thus compel their abandonment which would constitute a waste of an irreplaceable natural resource, and for the further reason that many of such wells produce water along with the oil and it is necessary to pump them each day in order to prevent their injury by water encroachment. That in each of said "Class A" pools each lease should receive said exemption up to an average of ten barrels per well per day but in the case of those leases where the average per well exceeds ten barrels per [fol. 78] day, the excess should be curtailed 50% so that, for example, an 80 acre lease with 8 wells thereon which is making a total of 100 barrels per day should be curtained and prorated so that it would receive an exemption of 80 barrels and the remaining 20 barrels of potential should be cut to 10 barrels, so that the total allowable production from such lease would be 90 barrels per day. In this manner the Commission estimates that the production from the "Class A" pools will be curtailed to the reasonable market demand therefrom.

(k) The Commission finds that the full potential production from the Oklahoma City pool cannot be produced without waste, including physical waste and waste incident to the production of crude oil or petroleum in excess of the reasonable market demand, and that the reasonable market demand from said pool at the present time, and during January, 1931, is and will be approximately 85,000 barrels per day, and that in the month of February, 1931, said reasonable market demand from said pool will be approximately 90,000 barrels per day, and that in the month of March, 1931, the reasonable market demand from said pool will be 90,000 barrels per day, and that the market demand herein named is subject to increase and the Commission therefore finds that the orders, rules and regulations should be made sufficiently flexible so that increases or decreases in market

demand from said Oklahoma City pool and increases or decreases in potential production therefrom, can be recognized by ancillary orders of the Commission, and that for this purpose the Umpire and Operators Committee should be instructed to compute from time to time, the rate of curtailment necessary in order to conform the permitted production to the reasonable market demand from the said Oklahoma City pool and to report the same to the Commission with the facts in support thereof as a basis for such ancillary order; it being understood, however, that whatever reasonable market demand develops for crude oil from the Oklahoma City pool shall be prorated among all the producing wells therein, so that each well or lease will be permitted to produce its proportionate share of the amount of oil that may be produced from said field without waste.

The Commission further finds that if an increased reasonable market demand should be asserted the permitted production from the Oklahoma City pool could be increased in a substantial and corresponding amount without discrimination as against other pools.

The Commission finds from the evidence that crude oil and natural gas occur together, or in close proximity to each other in the ground, and that there is a common gas pressure throughout a common pool which exerts an [fol. 79] energy or force to move the gas and oil toward the point of least resistance, and that therefore when wells are drilled into a pool or structure the oil and gas become migratory, and, having the power of self transmission, will move from one property to another, underground, in such pool; and that when some of the wells in such a common pool are permitted to produce at a greater proportion of their capacity than others, drainage occurs from the less active to the more active wells, if such disproportionate condition is continued; that in the Oklahoma City pool there is a heavy gas pressure which would cause such drainage should disproportionate taking of crude oil and gas be permitted; that the history of the oil producing business in this and other surrounding states shows that in the case of flush pools where proportional taking from the wells is not enforced, and where the full production from the pool cannot be taken, either because of inadequate transportation facilities or because the reasonable market demand does not equal the potential production, producers who

do not have physical or market outlets will be forced to produce their well to capacity in order to prevent drainage of the oil to the wells of such producers as do have adequate physical or market outlets. In such cases, in the absence of adequate steel storage available to every producer, some of them will flow the oil into earthen pits. This has occurred many times in the oil pools in Oklahoma and surrounding states and has always caused actual physical waste of the crude oil through evaporation, leakage, and washouts to a very large extent. The Commission finds that this would be the case in the Oklahoma City field, and in many other fields of the state if production were not curtailed as provided in this order.

The Commission further finds that to permit the wells in the Oklahoma City field to flow wide open and continuously, or disproportionately and without limitation as to time, would cause serious underground waste.

The Oklahoma City operators have petitioned this Commission for permission to change the method of proration in said pool from the time basis to the basis of percentage of daily potential production and this Commission's rules and regulations with reference thereto are embodied in a separate supplemental order this day issued. Proration of the Oklahoma City pool has heretofore been on the time basis because the operators requested it and because there was no practicable way of taking accurate gauges as a basis for proration by the percentage of potential method, there being no facilities for handling the oil that would be produced while the gauge was being taken. But the Commission now finds that a reasonably accurate gauge of potential production may now be taken and that under the circumstances as they now exist percentage proration would be better for the field in regard to reducing the possibility of waste and more equitable as between producers.

[fol. 80] (1) The Commission finds that the potential production of the State of Oklahoma now so far exceeds the reasonable market demand from said State as a whole, and the resulting curtailment of producing wells has become so drastic and severe, that it would be inequitable and unfair and discriminatory to hereafter permit full production from wild-cat wells hereafter drilled which open new pools, sands or zones, and the Commission therefore finds that all wild-cat wells or wells opening new pools, sands or zones

completed or brought into production after the date of this order should be limited to a production of 50 barrels per well per day, after one day open flow for test, and until otherwise ordered by the Corporation Commission.

The Corporation Commission further finds that the allegations of the supplemental petition filed herein are true and correct, and that accordingly these conditions of waste now exist in said pools, and commission of waste is imminent, and the same should be prohibited and prevented, and the following rules and regulations are necessary, reasonable and appropriate for that purpose.

It is therefore ordered by the Corporation Commission of the State of Oklahoma as follows:

1

The areas to be subjected to the rules and regulations of the Corporation Commission are all of the oil pools in the State of Oklahoma, and such new pools, sands or zones as may come into production during January, February and March, 1931.

2

Ray M. Collins is hereby appointed as Umpire and Agent of the Commission to enforce the rules and regulations herein made and he is hereby authorized to employ as many assistants as he shall deem necessary.

3

Where percentage proration is applied a gauge of producing wells shall be taken in the following manner: the gauge to determine potential shall be taken by each operator in the pool in respect of the lease or leases owned by him therein and then producing, such gauge to be taken between the hours of seven A. M. on the day set by the Order of the Commission, and seven A. M. on the following day. Prior to the taking of such gauge and in respect of each producing lease covered hereby the Umpire shall appoint a representative of an operator owning a lease adjoining the particular property to be gauged, and shall notify the operator whose property is to be gauged of the name of the representative, such notification to be given prior to the taking of such gauge. It shall be the positive duty of such

representative to remain on the lease that is being gauged throughout the entire day that the gauge is being taken to witness the gauging of the production therefrom; and immediately upon the completion of such gauge, such witness and the operator whose property was gauged shall file a written statement with the Umpire showing the production of said lease, and of each well thereon for the day said gauge is taken. The production so shown shall constitute the potential for said lease until the next gauge is taken. During the time this Order is in force a similar gauge of each property shall be taken from time to time as the Umpire and Operators' Committee may designate but not less than once each month. Such open gauges shall be taken in the following pools: Wewoka (Section 30 and Townsite), East Earlsboro, South Earlsboro, Section 29-9-6 (West Seminole), the flush wells in the Carr City pool located in Sections 2 and 3, Twp. 8, Range 5, and the flush wells in the Tatums pool.

On the ba-is of open gauges heretofore taken in East Little River, Konawa, West Asher-Wanette, Earlsboro Townsite and Sasakwa, the potential production shall be [fol. 81] declined 5% per month until further order of the Commission. On the basis of gauges already taken of the Wilcox sand wells of the Allen Pool, the potential shall be declined 3% each month, with the exception of the Sinclair-Cully 'A' Lease, Blackwell Fleet lease and the Texas-Lewis lease, which shall be declined 5% per month, and the Texas-Dinah lease, which shall be declined 10% per month; all other wells in the pools of the Greater Seminole Area shall be declined 3% a month.

4

Each person, firm or corporation having the right to drill into and produce oil from any of the flush or semi-flush pools or areas and extensions thereof that are covered by this Order may take from such pool or area and extension thereof only such proportion of all crude oil and petroleum that may be produced therefrom under this Order as the production of the well or wells of such person, firm or corporation in said pool or area bears to the total potential production of such pool or area. In the case of each such pool or area the Umpire and the Operators' Committee for said pool or area shall report from time to time any

changes in potential production or reasonable market demand so that this Commission may change the percentage allowable to equal the reasonable market demand.

5

Where shortages and overages have occurred under previous orders of this Commission, the same shall be carried forward and adjusted during the month of January 1931. Any lease showing an overage of one barrel or more at February 1, 1931, or at the first day of any month thereafter during the life of this Order shall be immediately reported by the Umpire under oath to the Corporation Commission as a basis for citation and such report shall contain in addition to the location of the property and the amount of the overage, the names and addresses of the lessee, the purchaser of the oil and the transporter. Leases which are being gauged according to a decline curve and showing a shortage at the end of any month of more than two days allowed production shall take as their potential for the following month the daily average production of the last ten days of the month. And in the case of such leases, shortages of two days allowable production or less shall be credited on the next month's allowed production.

6

To establish equality between producing wells and drilling wells, each well now drilling in any of said areas, or which may be commenced in said areas or in any new areas prior to March 31, 1931, shall take a delay prior to being brought into production, equal to the accumulated shut-in time and accumulated equivalent time resulting from pinching of producing wells from the beginning of the proration period in each pool, said period of delay to be computed in each instance after allowing seven (7) days for the cement to set: Provided the maximum shut-in time in each of said pools shall be according to the following schedule:

Area	No of days cement to set	No. of days of open flow for test	Days shutdown
Oklahoma City	7	8 hours	57
East Earlsboro	7	1 day	41
Konawa	7	1 day	16
West Asher-Wanette	7	1 day	16
Marshall-Lovell	7	1 day	16
South Earlsboro	7	1 day	16
Seminole, et al	7	1 day	16

Previous orders of the Corporation Commission as to wells now completed but not on production shall be continued in effect as to the shutdown requirements therein. Wildcat wells hereafter completed and opening new pools, sands, or zones shall have one day of open flow for test and thereafter the production therefrom, together with that from subsequently completed wells therein, shall be pinched in to 50 barrels per well per day until further order of the Corporation Commission. A wildcat well shall be considered as one outside of a pre-existing drainage area.

7

That all purchasers and pipeline carriers of oil in the State of Oklahoma be and they are hereby forbidden to aid or abet producers in violating this Order.

[fol. 82]

8

Attention of the producers in each pool is hereby directed to Section 7959, Compiled Oklahoma Statutes, which provides that any person, firm or corporation may institute proceedings before the Corporation Commission or apply for a hearing upon any question relating to the enforcement of the conservation laws. In this connection, producers in each of the pools in Oklahoma are invited to appear before the Commission at any time that they may deem themselves peculiarly injured by the administration of this order in any particular or in any manner discriminated against, and the Commission will hear and act upon the evidence disclosed in such hearing. Notice should be given to the Umpire and Operators' Committee of the intention to thus appear before the Commission on any such question.

9

Class A Pools: All oil pools in the State designated as "Class A" pools shall be prorated in the following manner. All leases in said pools which have a potential production in excess of an average of 10 barrels per well per day shall be curtailed 50% of the excess over such 10 barrels per well per day average. In all leases in said pools an exemption from proration of an average up to 10 barrels per well per day shall be allowed. The following is an illustration of what is intended by this regulation, to-wit: an 80-acre lease

with 8 wells thereon which is making a total of 100 barrels per day will be allowed an exemption of 80 barrels and the remaining 20 barrels will be cut to 10 barrels so that the total allowable production from the lease as a whole will be 90 barrels. The pipelines and purchasing companies are hereby directed to observe and enforce this regulation in said "Class A" pools and to assist the Umpire and Operators' Committee in carrying out the requirements hereof.

10

Class B pools: The following semi-flush pools shall be placed in "Class B", to-wit: Allen (Wilcox), Allen (Cromwell), Bowlegs, Earlsboro (proper), Earlsboro Townsite, Little River, East Little River, Marshall-Lovell, Maud, Mission, Sasakwa, Searight, Seminole, East Seminole and St. Louis.

These pools shall be curtailed in the following manner:

Allowed production, 50% of potential production with this qualification—that in the case of any lease not capable of making in excess of 50 barrels per day, it shall be allowed an exemption of 10 barrels per well per day and the curtailment of 50% shall only be applied to the excess over an average per well of 10 barrels per day.

11

Class C Pools: The following pools shall be placed in "Class C", to-wit: Carr City pool with its new extension and South Earlsboro pool. These pools, to recognize the market outlet and to conform to the peculiar conditions therein shall be curtailed according to the following schedule:

Average Barrels per Well per Lease			
300 barrels or more,	allowed production	25%	
200 to 300 barrels,	" "	30%,	not over 75 bbls.
100 to 200 barrels,	" "	37½%,	not over 60 bbls.
Less than 100 bbls.,	" "	50%	

Also, in these pools where a lease is not capable of making more than 50 barrels per day, there shall be allowed an exemption of 10 barrels per well per day as in "Class B".

12

Class D Pools: Konawa Pool. There being no other pool in the State in similar position to that of Konawa, it is

placed in a class by itself and shall be prorated on the following schedule:

Average Barrels per Well per Lease			
400 barrels or more,	allowed production	18¾%	
300 to 400 barrels,	" "	22½%,	not over 75 bbls.
200 to 300 barrels,	" "	26¼%,	not over 67 bbls.
100 to 200 barrels,	" "	37½%,	not over 53 bbls.
Less than 100 barrels,	"	50%	

[fol. 83] Also, in this pool, leases not capable of making over 50 barrels per day shall be granted an exemption of 10 barrels per well per day as in "Class B".

13

Class E Pools: East Earlsboro, West Asher-Wanette, West Seminole (29-9-6), and Wewoka (Section 30 and Townsite). Owing to the changing relation between the potential production and the market outlet from these pools, it is ordered that each of them be limited in production to a stated figure representing the present market outlet which, in the case of the East Earlsboro pool, is 15,000 barrels per day, and in the case of the West Asher-Wanette pool is 7,200 barrels per day, and in the case of the West Seminole (20-9-6) pool is 3,000 barrels per day, and in the case of the Wewoka (Section 30 and Townsite) pool is 4,000 barrels per day. And that the Umpire and Operators' Committee be required to ascertain and compute from time to time the percentage of potential production which may be allowed to conform the permitted production to the market outlet and to report the same to the Corporation Commission as the basis for an ancillary order. But in these pools the 10 barrel per well exemption in leases not capable of making in excess of 50 barrels per day shall apply as in "Class B".

14.

Class F Pools: Tatums and Chandler Pools. Both of these pools have new extensions with potentially large wells along with old, small wells. Having in view the present market outlet from these pools, it is ordered that they be curtailed in the following manner:

Wells with a potential daily production of 400 barrels or more shall be allowed 100 barrels daily. Wells with a daily potential of from 100 barrels to 400 barrels shall be allowed

50 barrels per day. Wells with a daily potential production of less than 100 barrels shall be allowed an exemption of 10 barrels per day and be curtailed 50% of the excess over 10 barrels.

Provided: That the Umpire and Operators' Committee shall, from time to time, make a survey of the market outlet from each of said pools and in case the market demand increases, this fact, together with suggested changes in the percentage of allowable production, shall be reported to the Commission as the basis for an ancillary order.

15

Class G Pools: West Perry, Orlando and Township 20 North, Range 4 West. These new pools of unascertained possibilities are now being curtailed on the basis of the following maximum allowed output which shall be continued until otherwise ordered by the Commission, to-wit:

West Perry	600	barrels daily
Orlando	400	" "
Twp. 20 R. 4W	400	" "

16

Class H Pools: The Oklahoma City pool. The Corporation Commission temporarily nominates for the Oklahoma City pool an outlet of 85,000 barrels per day in January, 1931, 90,000 barrels per day in February and 90,000 barrels per day in March. This nomination of the total permitted production of the pool shall serve as a basis for fixing the proportional production of the wells in said pool until the Commission finds from evidence that a greater or less reasonable market demand obtains. On the basis of the potential production of the field now reported to the Commission of 5,388,298 barrels per day, the temporarily nominated outlet of 85,000 barrels per day will require a proportional taking of 1½% from the potential production of each well or lease. This percentage shall be put in effect at 7 A. M. January 3, 1931, but the Umpire and Operators' Committee are directed to immediately begin the taking of gauges in said field according to the supplemental order this day issued and to compute the percentage of allowable from time to time as found necessary to conform the permitted production to the reasonable market demand, and to

report as soon as possible their findings to the Commission as a basis for an ancillary order revising such permitted percentage. Any person interested in said pool may also report to the Commission any evidence of the need for a changed percentage. All orders heretofore issued applicable to the Oklahoma City pool, and now in force and effect, are hereby extended in full force and effect until 7:00 [fol. 84] A. M. January 3, 1931. From and after said date and hour the percentage of allowable production herein fixed for the Oklahoma City pool shall be applied according to and as modified by Order No. 5413 this day issued which applies to the Oklahoma City pool alone.

It is further ordered that whatever reasonable market demand from the pool shall exist at any time shall be prorated and allocated among all the producing wells and leases, so that each well or lease shall receive its prorata share of the reasonable market demand, and the pipeline companies are hereby directed to cooperate with the Umpire in so arranging pipeline connections that there shall be no discrimination in favor of one producer and against another.

17

The Commission will, in separate order, name for the various pools embraced within the terms and provisions of this Order, Operators' Committees for each of said respective pools and territories embraced herein. This will be necessary for the reason that the law requires the approval of His Excellency, the Governor of the State of Oklahoma, in the appointment and designation of such officials.

The Order #5369 of October 28, 1930, shall be continued in force for the period January 1, 1931, to and including March 31, 1931, except as modified by this and other supplemental and ancillary orders of the Commission. Jurisdiction of this cause is hereby retained by the Corporation Commission, and notice is hereby given that supplemental and ancillary orders may be made herein from time to time as required by new developments and as instructions to the Umpire and Operators' Committee. When in the judgment of the Umpire or any Operators' Committee any adjustment or fixing of percentages of well production as provided in this order shall be proper, or as any such sup-

plemental or ancillary order shall become necessary, the facts supporting the necessity therefor and the reasonableness thereof shall be reported to the Commission for approval, and no exception to those rules and regulations shall be allowed by the Umpire or Operators' Committee, nor shall any adjustment of percentages or well production become effective, unless approved by such an ancillary order of this Commission. Should the demand for crude oil from the State of Oklahoma increase prior to March 31, 1931, to such an extent as to permit a greater outlet from the pools herein mentioned, the Umpire shall report the facts to the Commission, together with the recommended percentages, and the Corporation Commission hereby gives notice that such revised percentages may be substituted for the percentages provided for in this order.

Done at Oklahoma City this the 30 day of December, 1930.

Corporation Commission of Oklahoma. ——— ———, Chairman. Fred Capshaw, Commissioner. E. R. Hughes, Commissioner.

Attest: E. D. Hicks, Jr., Secretary.

[fol. 85] EXHIBIT "Y"

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause No. 10326. Order No. 5414

In the Matter of the Application of WIRT FRANKLIN for Rules and Regulations to be Established by the Commission to Prevent Waste of Petroleum in the Producing Oil Fields of the State of Oklahoma

Re Supplemental Application of OTTO BRADFORD for Additional Rules and Regulations in the Oklahoma City Pool

Order

Comes now the petitioner herein and various and sundry producers of oil in the Oklahoma City Pool in the State of Oklahoma, and the Commission having made an investiga-

tion of the matters alleged in the above petitions in this cause and of the conditions in the Oklahoma City Pool, and being fully advised in the premises, finds:

(a) That production in the Oklahoma City pool has heretofore and is now being carried out upon the time proration plan. During the hearings in this cause prior to the issuance of Order No. 5369 therein, much testimony was taken relative to whether or not waste would best be prevented by a continuance of the time proration plan or the application of a percentage proration plan somewhat similar to that in force in the other oil fields of Oklahoma. After the filing herein of the petition of Otto Bradford further hearings were had, being finally concluded, and the matter submitted on December 22, 1930. During the course of these hearings a percentage plan of proration having been approved by an Operators' meeting and submitted, the Commission directed the Operators' Committee heretofore appointed by the Commission for the Oklahoma City pool, to formulate and submit for the consideration of the Commission a revised plan for the application of percentage proration in the Oklahoma City pool. Pursuant to such direction the said Operators' Committee has filed a proposed plan with the Commission.

(b) That under the operation of the Proration Orders heretofore placed in effect by the Commission as shown by the reports of the Commission's Umpire, and filed with the Commission, certain wells in the Oklahoma City pool have produced during less than the time allowable under such orders, making said wells under produce, there has been no available market outlet for the oil produced from some wells in said pool which have produced in obedience to the terms of said orders, making certain wells under run and certain wells have produced more than the allowable time under said orders and are overproduced. It is therefore necessary in any change of plan to make provision whereby such wells may be brought to a condition of "even" under said orders, the order this day issued or any future orders.

(c) That conditions which have heretofore prevailed rendering it inexpedient to apply the percentage proration plan to the Oklahoma City pool, particularly lack of facilities to make a proper gauge of potential for the applica-

tion of percentage proration, have now become sufficiently modified that a reasonable percentage plan of proration can be applied.

[fol. 86] (d) That under the proration plan now in operation in the Oklahoma City pool, the basis upon which the time of opening and closing the wells has been a fixed number of hours in each 12 day period. The present period will come to an end at 7:00 A. M. January 3, 1930, and for the efficient operation of the plan this order should become effective as of that date and hour.

From and after 7 o'clock A. M. January 3, 1931, and until otherwise ordered by the Corporation Commission, such ratable production of oil from the Oklahoma City pool and such proration among the wells in said pool of the reasonable market outlet for said pool as may from time to time be ordered by the Corporation Commission, shall be applied in accordance with the following plan, to-wit:

1

(1) The period commencing at 7 o'clock A. M. January 3, 1931, and ending at 7 o'clock A. M. on the first day of April, 1931, shall constitute the first potential period, and each three consecutive calendar months thereafter, commencing at 7 o'clock A. M. on the first day of the first month of said three months period and ending at 7 o'clock A. M. on the day following the last day of the third month shall constitute a potential period:

(2) As to each well in the pool, the first potential determined during any potential period shall constitute its tentative potential for that period, and based on such tentative potential and the percentages of potential which the Corporation Commission allows to be produced from time to time during such potential period, the tentative allowable production of each well during such potential period shall be determined in the manner hereinafter provided, and, except as hereinafter otherwise provided, each well in the pool shall, during such potential period, be permitted to produce its tentative allowable production for such period so determined.

(3) As to each well in the pool, except as hereinafter otherwise provided, the corrected potential for each potential period shall be the average of the tentative potentials

so determined for that and the next succeeding potential period, to be determined as soon as the tentative potential for such succeeding period has been determined, and, based on such corrected potential and the percentages of potential which the Corporation Commission allowed to be produced from time to time during the potential period to which same is applied, the corrected allowable production for such potential period shall be determined, and the amount by which the actual production of any well during any potential period exceeded or was less than the corrected allowable for such potential period shall be carried over in to the next potential period as a charge or credit against or in favor of said well, as the case may be.

(4) In the event during any potential period any well, subsequent to the determination of its tentative potential for such period, is shot, cleaned out, deepened, tubed, put on air-gas lift, or plugged back in such manner as, in the opinion of the operator or of the Umpire, to materially affect its potential as determined in the next succeeding potential period, then the corrected potential of such well for said current potential period shall be agreed on by the operator of such well, the Umpire and the majority of the Operator's Committee, and in the event they are unable to so agree, the Umpire shall immediately refer the matter to the Corporation Commission for determination, and pending final determination by the Corporation Commsision, the [fol. 87] corrected potential of such well for such current potential period shall be that fixed by the Umpire and a majority of the Operator's Committee.

(5) The tentative allowable production and corrected allowable production of each well in the pool for any potential period shall be that determined as hereinabove provided, plus or minus, as the case may be, any credits or charges in favor of or against said well carried over from the preceding potential period.

2

(1) At 7 o'clock A. M. on the first day of each potential period, each well in the pool shall, except as hereinafter otherwise provided, be completely shut in, and remain shut in until opened for the purpose of having its tentative potential determined in accordance herewith, provided, that

notices as hereinafter prescribed, with respect to time of taking such potentials on the first day of any potential period, may be filed with the Umpire on or before 12 o'clock noon of the preceding day.

(2) Before any well in the pool is opened for the purpose of having its potential determined, the owner or operator thereof shall file with the Umpire at his office in Oklahoma City, on or before 12 o'clock noon of the day preceding the day on which such well is to be opened for such purpose, a written notice giving the name and address of the operator in charge of said well, the name of the operator's representative who will witness the test of said well, the name and location of the lease on which the well to be tested is located, the serial number of said well on the lease, and the hour, not earlier than 8 o'clock A. M. nor later than 1 o'clock P. M., at which the well will be opened for such purpose. Such notices shall remain on file in the office of the Umpire, and be subject to inspection by any producer in the pool, and it shall be the duty of the Umpire to maintain available for such inspection in his office from 1 o'clock to 5 o'clock each afternoon a list of all wells which are to be tested during the succeeding day.

(3) When, in pursuance hereof, a well is permitted to be opened for the purpose of determining its potential, it shall be permitted to produce for four hours to be taken continuously, whether or not the well produces continuously during such time, and to be computed from the hour and minute oil first flows into lease tankage from the oil and gas separator. The amount of oil produced from said well during said four hour period multiplied by six shall constitute the tentative daily potential of said well for the current potential period.

(4) For the purpose of determining the amount of oil produced during said four hour test period the oil produced during the period is to be gauged in lease tankage which has been strapped in accordance with the usual and customary practice prevailing in the Oklahoma City field, and the amount of oil produced shall be calculated on the basis of ninety-seven per cent tank tables. The usual and customary tests and deductions shall be made for water and B. S. content, and the oil shall be gauged only after it has stood in lease tankage for a period of at least one hour.

(5) The potential of each well in the pool is to be determined as soon as practical after seven o'clock A. M. on the first day of each potential period, provided, wells which on the 3rd day of January, 1931, are over produced under time proration are to remain shut in until they are even, and [fol. 88] wells which on the first day of any potential period have not served their shut in time and time charged against them account initial test, as provided by orders of the Corporation Commission, shall remain shut in until they have served such shut in time and time charged against them.

(6) The Umpire shall appoint a representative of an operator who is in no way interested in the well to be tested to be present and witness the test being made of each well, and it shall be the duty of the representative so appointed by the Umpire to remain at the well which is being tested during the entire time the same is being produced for the purpose of determining its potential, and to witness all operations, tests for B. S. and/or water content, measurements and/or calculations made for the purpose of determining the actual production of oil made by the well being tested during the test period as above defined. Immediately upon the completion of such test, the representative appointed by the Umpire and the representative of the operator shall file with the Corporation Commission, and a copy thereof with the Umpire, a written statement duly verified by both representatives on form to be approved by the Corporation Commission, showing the amount of oil produced by said well during the test period as above defined.

(7) In the event the Umpire's representative, and well owner's representative at the testing of the well, are agreed as to the daily potential of the well as determined by the test, the operator may continue forthwith to produce said well until there has been produced therefrom, including the amount produced during the test, the total allowable, to be calculated as hereinafter provided, for the current month. In the event the representatives of the Umpire and the well owner are not agreed as to the daily potential of any well, the well shall be shut in at the close of the test, and the matter referred to the Umpire. If the Umpire and the operator agree as to the daily potential of the well, the operator shall, thereupon, be permitted to produce the well until

it has produced, including the amount produced during the test, its tentative allowable for the current month based upon the potential so agreed upon. If well owner and Umpire are unable to agree as to the daily potential of any well, the matter shall be referred to the Corporation Commission for determination, and, pending final determination by the Commission, the operator shall be permitted to produce the well until, on the basis above outlined, it has produced a tentative allowable for the current month calculated on the basis of the daily potential as fixed by the Umpire.

3

(1) The tentative allowable production of any well for the remainder of the month of January, 1931, from seven o'clock A. M. on January 3rd, to seven o'clock A. M. on February 1, 1931, and for each month thereafter, shall be determined, (a) for the remainder of the month of January, by multiplying its tentative potential for said month by the percent of allowable production as fixed by the Corporation Commission for that month, and the product by 29, and, (b) for each month thereafter, by multiplying its tentative potential for said month by the percent of allowable production for that month as fixed by the Corporation Commission, and the product by the number of days in the month, and by adding to or subtracting from the product so obtained all credits or charges, as the case may be, carried over from the preceding month and/or potential period, provided, the tentative allowable production of wells, which on the 3rd day of January, 1931, or on the first day of any subsequent potential period are shut in account being over produced under time proration or account not having served their shut in time and time charged against them account initial test, as prescribed by orders of the Corporation Commission, for the remainder of the month in which they, respectively, become even or complete their shut in time and time charged against them account initial test, shall be determined by multiplying their tentative potential last determined by the percent of allowable production [fol. 89] for that month as fixed by the Corporation Commission, and the product by the number of days in such month subsequent to the day and hour on which such wells, respectively, became even or completed their shut in time and time charged against them account initial test.

(2) The Umpire shall advise each operator each month by written notice the tentative allowable production for such month of each well being operated by such operator, such notice to be given for the month of January, 1931, on, or as soon as practical after the third day of said month, and for each month thereafter, on, or as soon as practical after the first day of said month, and no operator shall produce from any well in the pool during any month a greater amount of oil than its tentative allowable production for that month determined as herein provided.

(3) The under produced time of wells which on January 3, 1931, are under produced on time proration, shall be converted into barrels of oil on the basis of the tentative potentials of said wells respectively, for the first potential period, and the amount in barrels of oil of the under production of each said well so arrived at shall be credited to it as an underage as of 7 o'clock A. M. on the third day of January, 1931.

4

(1) Each operator shall each day furnish to the Corporation Commission on forms to be prescribed by the Commission, written statements sworn to by an authorized representative of the operator, showing for the preceding day the name and address of the operator, the name and location of the lease on which are located either oil or gas wells, and as to each well on each lease, the tentative allowable production for the current month, determined as herein provided, the overage or shortage from the preceding month, the net tentative allowable production for the current month, the production on the day for which the report is made, the balance remaining of tentative allowable production for the current month, and as to each lease, the amount of oil shipped by pipe line and by tank car with the name of the pipe line and/or railway company transporting same, as the case may be, and the name and address of the purchaser of oil so shipped.

(2) Each operator shall also file with the Corporation Commission each day, on forms to be prescribed by the Commission, sworn statement showing for the preceding day the total amount of gas produced from each well which has been classified by the Corporation Commission as a gas

well, the disposition made of the gas produced therefrom, the amount of hydro-carbon liquid produced therefrom, and the disposition made of such liquid.

(3) Where gas wells which produce hydro-carbon liquid are located on the same lease on which are located oil wells, the gas wells producing such liquid shall not be permitted to produce into the same tanks or into tanks in any way connected with the same tanks into which oil wells are producing. In the event the liquid production from gas wells located on a lease on which are also located one or more oil wells, is disposed of as pipe line oil, the amount of oil produced by gas wells on any such lease during any month shall be deducted from the allowable production for said month of the oil wells located on the same lease, such deduction to be made from the allowable production of each such oil well in proportion to its potential determined as hereinabove provided.

[fol. 90] 5

(1) Before testing any wells for potential during the month of January, 1931, and within five days after the end of each month thereafter, each operator shall file with the Corporation Commission on forms approved by the Commission, a sworn statement with respect to each lease, showing the name and address of the operator thereof, the name and location of the lease, a list of the lease tanks on the lease showing pipe line numbers of each tank, a list of all tanks used as lease tanks off the lease, showing the location, pipe line company numbers thereof, and the amount of oil in each tank as of 7 o'clock A. M. on the 3rd day of January, 1931, and as of 7 o'clock A. M. on the first day of each month thereafter.

(2) The umpire shall forward to each producer each month a statement showing as to each oil well in the field its potential, its tentative allowable for the preceding month, any overage or underage as of the first day of the preceding month, its net tentative allowable for the preceding month, its actual production during the preceding month, and its overage or underage, if any, as of 7 o'clock A. M. of the first day of the current month, and showing as to each lease the stock of oil on hand as of 7 o'clock A. M. the first day of the preceding month, the total production dur-

ing the preceding month, the total shipments during the preceding month by pipe lines and tank cars, showing the amount shipped by each, and stocks on hand as of 7 o'clock A. M. the first day of the current month.

(3) Copies of all reports herein provided to be furnished to the Corporation Commission shall at the same time be furnished the Umpire at his office in Oklahoma City.

(4) Any person, firm or corporation transporting crude oil from the Oklahoma City field shall file with the Corporation Commission each month, on or before the tenth day of the month, a statement in duplicate showing the number of barrels of crude oil run from each lease in the field during the preceding month, and each railroad company which transports crude oil by tank car from Oklahoma City shall each month file with the Corporation Commission a statement in duplicate showing as to each shipment of oil from Oklahoma City, the name of the shipper, the name of the consignee, the destination of the shipment, the number of cars shipped showing the serial number of each car and the weight of the shipment.

6

It is hereby made the specific and mandatory duty of the Umpire to report any violations of this order to the Corporation Commission.

(e) That under the present conditions the application of a percentage plan of proration will serve to prevent waste in the Oklahoma City pool.

(f) That due notice on all persons and classes interested in the proceeding and in the rules and regulations to be established hereby has been given, as required by law, by publication for a reasonable time in a newspaper of general circulation in this State and otherwise.

It is therefore ordered by the Corporation Commission of the State of Oklahoma as follows:

Due to the situation in regard to underrun and underproduced wells, the percentage of allowable runs this day fixed for the Oklahoma City pool, shall until the further order of the Commission, and notwithstanding any other provision of this Order or of the general order this day issued, be applied as follows:

[fol. 91] 1. All overproduced wells shall be entirely shut in until they have made up such overage and are again "even".

2. Wells which are even shall be allowed to produce only 2/3 of their allowable production as fixed in the general order this day issued.

3. The amount of allowable production said general order having been calculated upon the percentage of all wells in said pool whether underproduced or overproduced or even, that amount of oil, which, except for this section of this order, would be allotted to the overproduced wells and 1/3 of that amount of oil which, except for this section of this order, would be allotted to the even wells, shall be allotted to the underproduced wells in said pool. In addition to the allowable production of said wells as fixed in the general order this day issued, pro rate according to the potential production of said underproduced wells until all of said underproduced wells are even, at which time the Umpire shall forthwith report that fact to this Commission, that the Commission may then make a supplemental order placing all wells in said pool upon an equal basis of production.

Jurisdiction of the subject matter of this order and of this cause is hereby retained by the Corporation Commission and notice is hereby given that supplemental and ancillary orders may be made herein from time to time as required by new developments and as instructions to the Umpire and Operators' Committee and said Umpire and Operators' Committee are instructed to report from time to time for the action of this Commission any pertinent facts or recommendations bearing upon the operation of the rules and regulations.

Done at Oklahoma City this 30th day of December, 1930.

Corporation Commission of Oklahoma. ——, Chairman. Fred Capshaw, Commissioner. E. R. Hughes, Commissioner.

Attest: E. D. Hicks, Jr., Secy.

[fol. 92] EXHIBIT Z

Certificate

STATE OF OKLAHOMA,
Oklahoma County, ss:

To all to whom these presents shall come, Greetings:

I, E. D. Hicks, Jr., Secretary of the Corporation Commission of Oklahoma, do hereby certify that the following hereto attached is a true and correct copy of record on file in this office of the Corporation Commission of Oklahoma, covering Order #5396 under cause #10326, the original of which is now on file and matter of record of this office.

In testimony whereof I hereunto set my hand and affix the seal of the Corporation Commission of Oklahoma.

Done in Oklahoma City this the 5th day of December, 1930.

E. D. Hicks, Jr., Secretary Corporation Commission of Oklahoma. (Seal.)

[fol. 93] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause No. 10326. Order No. 5396

In the Matter of the Application of WIRT FRANKLIN for Rules and Regulations to be Established by the Commission for the Prevention of Waste of Crude Oil and Petroleum in the Producing Oil Fields of the State of Oklahoma

Order

On the 28th day of October, 1930, the Commission made and entered its Order No. 5369 in the above styled and numbered cause, by the terms and provisions of which rules, regulations and requir-ments looking to the prevention of waste in the productioa of crude oil and petroleum products within the State of Oklahoma were established. A supplemental Order was also made and entered on the 3rd day of November, 1930, dealing with the matter of the equalization of the amount of crude oil taken from Oklah-a City pool under previous orders of the Commis-

sion, for the purpose of allowing under produced wells to produce in such way and manner as to catch up with the equally or evenly produced wells in said field. A hearing was had by the Commission November 24th, 1930, upon the Commission's own initiative, for the purpose of attempting to determine in the Oklahoma City oil field the matter of whether or not proration in the future should be based and conducted upon the time basis of proration, or whether or not it should be changed, and conducted upon the percentage or potential basis.

Testimony at all of the hearing- heretofore held by the Commission had been introduced with respect to the difficulty of ascertaining the exact amount of oil produced in a given time, and the difficulty in securing an equal and fair taking as between the various producers of the pool. At each of these hearings, suggestions have been made as to the propriety of requiring verified reports at stated intervals, from the operators, in order to secure this information in a more substantial form than has heretofore been possible under the method in use. It has also been suggested at different times, without dissention or dispute, that certain operators in the Oklahoma City pool have produced their wells by the method commonly termed "stop-cocking"; that is, by using the time allotted to any given lease in the production of the wells by heads and not continuously for the period of time allotted to the lease or to the well. This method of production, it is agreed, results in an unfair taking from numerous wells in the field, as compared to the taking of other wells which are operated on an even time basis—that is by opening the well and allowing it to stay open and flow continuously for the period of time during which it is entitled to flow under the time basis of proration.

The Commission after having given considerable consideration to these matters, is of the opi-on and finds:

[fol. 94] First. That a supplemental Order should be promulgated requiring a written statement signed by some authorized representative of the operator, and verified under oath by such operator, containing the number of the well, as well as the location of the lease on which same is located; the amount of time which the well was under produced or over produced, as the case may be, under present

and prior orders of the Commission at the beginning of the current 12 day period; the current allowable time to be credited to said well for the current 12 day period, not including any underage accumulated prior to the first day of said period; the accumulated allowable time for the current 12 day period to be arrived at by adding together the amount of the underage, if any, and the current allowable time; the amount of the accumulated allowable time for the current 12 day period which has been charged to said well up to 7 o'clock A. M. on the preceding day; the number of times said well was open for production during such preceding 24 hour period, and the hour and minute when oil from said well first reached the oil and gas separator each time the well is opened; the number of times such well was shut in during such 24 hour period, and the hour and minute each such shutting in operation was completed; the amount of time charged against said well in pursuance of this and prior orders of the Corporation Commission during such preceding 24 hour period; the amount of allowable time remaining to the credit of such well for the remainder of the current 12 day period.

Second. That in the operation of the leases and wells in the Oklahoma City oil field under the present time proration basis, and in the computation of the 4 hour period as at present allowed by supplemental Order No. 5374 entered on November 3, 1930, the 4 hours allottable should be taken continuously and should be computed from the hour and minute oil production from any of said wells first reaches the oil and gas separator, and that in case any well is entitled to an allowable time of less than 4 hours during any current 12 day period, then when such well is opened for the purpose of taking its allowable time, such time shall be computed from the hour and minute oil produced from said well first reaches the oil and gas separator, and shall be computed continuously until such time is used; that any well under produced more than 4 hours shall be entitled to make up such underage in 4 hour periods to be computed as above provided, and if any such under produced well in making up its underage, comes to a point when its underage is less than 4 hours, then such remaining underage shall be taken continuously, provided, in the event a well which is making up under production under the terms and provi-

sions of Order No. 5374 adopted November 3, 1930, is not able to produce continuously for a full period as above defined, solely on account of the fact that the battery of lease tankage to which such well is connected is full, then and in that event such well shall not be charged with the full period, but shall be charged with the portion thereof prior to the hour and minute on which such battery of lease tankage became full, and the fact that such well was unable to produce for a full period solely for such reason, and the number and capacity in barrels of the battery of lease tankage to which such well is connected shall be stated in the verified statement to be filed with the Corporation Commission as hereinabove provided.

It should also be required that copies of all statements filed with the Corporation Commission in pursuance hereof, shall at the same time be filed with the Umpire at his office in Oklahoma City, Okla.

[fol. 95] It is therefore the order of the Commission, premises considered, that from and after the effective date of this order, and until otherwise ordered by the Corporation Commission, each producer of oil in the Oklahoma City Field shall file with the Corporation Commission each day, as of 7:00 o'clock A. M. of such day, a written statement duly signed and verified under oath by such producer, or the authorized representative of such producer, giving as to each well in said field operated by such producer which was opened for production at any time during the preceding 24-hour period, the following information, to-wit:

(1) The number of the well and the name and location of the lease on which same is located.

(2) The amount of time which said well was under-produced or over-produced, as the case may be, under present and prior orders of the Corporation Commission at the beginning of the current 12-day period.

(3) The current allowable time to be credited to said well for the current 12-day period, not including any underage accumulated prior to the first day of said period.

(4) The accumulated allowable time for the current 12-day period to be arrived at by adding together the amount of the underage, if any, as shown in paragraph two above,

and the current allowable time as shown in paragraph three above.

(5) The amount of the accumulated allowable time for the current 12-day period as shown in paragraph four above which has been charged to said well up to 7:00 o'clock A. M. on the preceding day.

(6) The number of times said well was opened for production during such preceding 24 hour period, and the hour and minute when oil from said well first reached the oil and gas separator each time the well was opened.

(7) The number of times such well was shut in during such preceding 24-hour period, and the hour and minute each such shutting-in operation was completed.

(8) The amount of time charged against said well in pursuance of this and prior orders of the Corporation Commission during such preceding 24-hour period.

(9) The amount of allowable time remaining to the credit of such well for the remainder of the current 12-day period.

It is the further order of the Commission that in computing the 4-hour period of production allowed by supplemental Order No. 5374, entered herein on November 3, 1930, the four hours shall be taken continuously, and shall be computed from the hour and minute oil produced from said well first reached the oil and gas separator.

If any well is entitled to an allowable time of less than four hours during any current 12-day period, then when such well is opened for the purpose of taking its allowable [fol. 96] time, such allowable time shall be taken continuously, and the allowable time computed from the hour and minute oil produced from said well first reached the oil and gas separator, as above provided.

Wells under-produced more than four hours shall be entitled to make up such underage in 4-hour periods to be computed as above provided. If any such under-produced well, in making up its underage, comes to a point when its underage is less than four hours, then such remaining underage shall be taken continuously provided, in the event a well which is making up under-production in pursuance of Order No. 5374, entered herein on November 3, 1930, is not

able to produce continuously for a full period as above defined, solely on account of the fact that the battery of lease tankage to which such well is connected is full, then and in that event such well shall not be charged with the full period, but shall be charbed with the portion thereof prior to the hour and minute on which such battery of lease tankage became full, and the fact that such well was unable to produce for a full period solely for such reason, and the number and capacity in barrels of the battery of lease tankage to which such well is connected shall be stated in the verified statement to be filed with the Corporation Commission as herein above provided.

Copies of all statements filed with the Corporation Commission in pursuance hereof shall, at the same time, be filed with the Umpire at his office in Oklahoma City, Oklahoma.

Done at Oklahoma City this the 4th day of December, 1930.

Corporation Commission of Oklahoma. ——, Chairman. Fred Capshaw, Commissioner. T. R. Hughes, Commissioner.

Attest: E. D. Hicks, Jr., Secretary.

[File endorsement omitted.]

[fol. 97] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF DEFENDANTS TO SECOND AMENDED AND SUPPLEMENTAL BILL OF COMPLAINT—Filed Dec. 27, 1930

Come now the defendants and for their answer to the plaintiff's second amended and supplemental bill of complaint, hereinafter referred to as "bill of complaint", allege and state:

I

Defendants move the court to require the plaintiff to make a further and better statement of the allegations contained in paragraph numbered "X" of its said bill of complaint by stating and setting forth the description of its oil

and gas leases on lands in other oil and gas fields in Oklahoma in addition to those described in paragraph numbered "VI" of said bill of complaint, and to give the names of the respective oil and gas fields in which said other leases are located and to state the potential capacity of the several wells in each of said other oil and gas fields.

II

Defendants move to strike from said bill of complaint all allegations therein contained relating to the orders of the defendant Corporation Commission dated respectively June 30, 1930, August 30, 1930, and September 10, 1930, for the reason that said orders have by their terms expired and are no longer in force and effect.

[fol: 98] III

Defendants move to dismiss said bill of complaint for the reason that same does not set forth facts sufficient to constitute a valid cause of action in equity.

IV

Without waiving the above motions, or either of them, defendants, for further answer, state:

1. Defendants admit the incorporation of the plaintiff, as alleged, and the citizenship and residence of the parties and the value of the matter in controversy, as alleged by the plaintiff, and that the matter in controvery arises under the Constitution and laws of the United States, and admits that the Corporation Commission of Oklahoma is a board created and vested with certain powers by Article 9 of the Constitution of said state, and that the defendants Fred Capshaw, E. R. Hughes and C. C. Childers are the duly elected, qualified and acting Corporation Commissioners of said state and have comprised the Corporation Commission of said state during all the time mentioned in said bill of complaint; and they allege that said Commission is vested with certain additional powers by the provisions of the Act of the Oklahoma Legislature approved February 11, 1915, known as the "Oil Conservation Act", referred to in said bill, and by the provisions of an Act of the Oklahoma Legislature, passed at its 1907-8 Session, incorporated in

the Compiled Statutes of Oklahoma, 1921, as Section 3498, and other sections and provisions of the Laws of Oklahoma relating to the conservation of the oil and gas resources of said state and the enforcement thereof.

2. They admit that the plaintiff is now and has been, since its incorporation, engaged in the business of producing and refining crude oil and transporting and marketing petroleum, natural gas and their products in intra-state [fol. 99] commerce, and that plaintiff in transporting and marketing the refined products of crude oil in interstate commerce, but are without knowledge that plaintiff is transporting and marketing petroleum (in its unrefined state) in interstate commerce; admit that plaintiff owns and operates an oil refinery at Enid, Oklahoma, with a capacity of refining 15,000 barrels of crude oil per day, and that said refinery plant refines and manufactures gasoline, kerosene, lubricating oils, greases and other by-products; that they are without knowledge that plaintiff owns approximately 735 tank cars which it uses in the distribution of its refined products in various states named in said bill, and are without knowledge that plaintiff controls and operates approximately 470 miles of pipe line for the transportation of oil and gas in Oklahoma and other states, but admit that plaintiff controls and operates a number of miles of pipe line for said purpose; are without knowledge that plaintiff owns and operates approximately 263 retail gasoline filling stations and 256 wholesale gasoline stations in the states named in said bill which it supplies from its Enid refinery, but admit that plaintiff owns a large number of gasoline filling stations and wholesale gasoline stations which it supplies from said refinery, and admit that all of said property represents an investment of several million dollars.

3. Defendants admit that plaintiff is and has been for some time past, but denies that it has been at all times mentioned in said bill, the owner and holder of oil and gas leases, as alleged by it, on the lands particularly described in paragraph VI of said bill. They admit that plaintiff has drilled the wells on said tracts of land as alleged in said bill at the approximate cost therein set forth and that said wells were of the potential capacities respectively as alleged therein.

4. But defendants allege that the described lots located in the Oklahoma City field in Oklahoma County covered by leases belonging to plaintiff, are in three separate small tracts or parcels of land, that is to say, Lots 30 to 35, inclu- [fol. 100] sive, in Block 2, Roosevelt Place Addition to Oklahoma City, upon which one of plaintiff's large wells is located, constitute one tract of land, and contain .48 of one acre of land; that Lots 50 to 51 in said Block 2 constitute another separate tract of land containing .16 of one acre of land; and that Lots 23 to 26, inclusive, in Block 9, Armourdale Addition to Oklahoma City, upon which the other of plaintiff's Oklahoma City field wells is located, constitute a third and separate tract of land containing .31 of an acre of land; and they state that said three tracts of land are not contiguous and that they are situated with reference one to another and to other lands upon which companies and individuals other than plaintiff have and own oil and gas leases as shown on a map hereto attached, marked "Exhibit No. 1", and made a part hereof, on which plaintiff's leased land is colored red. Said map covers the most of Section 2, Township 11 North, Range 2 West, which contains 640 acres of land, and comprises less than one-tenth of said field. They allege that in said field producing wells of large capacities, drilled into the producing horizon in which plaintiff's wells in said field obtain production, have been drilled by others owning leases on land surrounding and in the general vicinity of the lands leased to plaintiff, which other wells are located with reference to the acreage covered by plaintiff's leases as shown by black spots on said map hereto attached and marked "Exhibit No. 1."

5. Defendants further allege that the present developed area in the Oklahoma City field comprises about 7,000 acres of land and that there have been drilled therein approximately 648 wells, productive of oil, as are plaintiff's wells, in large quantities; that a comparatively small portion of said field, on the north and northwest, wherein plaintiff's said wells are located, called the "Town Lot" portion thereof, covers several laid out and platted additions to Oklahoma City, some within and others adjourning the southeastern corporate limits of said city, but that by far the greater portion of said field lies south and southeast of

said "town lot" portion of said field, extending a distance [fol. 101] of several miles; and that the wells drilled in that portion of said field, other than the "town lot" portion thereof, are located, generally speaking, and as is customary, one well to each ten acres of land, as is illustrated by the wells drilled on the southeast quarter of said Section 2 and spotted on said map, Exhibit No. 1, but that within said corporate limits and said additions, wells are usually located and drilled on less than ten acre tracts; but that, as is shown by Exhibits No. 1, heretofore attached, the wells on the lands surrounding plaintiff's leased lands are drilled upon larger tracts of land than the tracts covered by plaintiff's said drilled leased acreage. They allege that it is estimated by petroleum engineers and geologists that the amount of oil which will be ultimately recovered from the formation into which plaintiff's wells in the Oklahoma City field have been drilled will not exceed 20,000 barrels to the acre, and defendants aver that if the plaintiff be not limited as provided by the Oil Conservation Act of Oklahoma in the operation of its wells, it will be able, under the circumstances, to extract far more than its fair share of said oil, and the injury to many other producers in said field will be far greater than the injury, if any will at all accrue, to the plaintiff, if required to obey said Act.

Defendants further allege that the discovery well in the Oklahoma City field was completed in December, 1928, and that said field thereafter very rapidly developed by the completion from time to time of additional wells therein, and that said field was first placed under proration by an order of the defendant Corporation Commission, effective October 15, 1929, and that said field has been operated under proration orders of the Commission ever since said date, and they allege that the plaintiff acquired its said leases in said field after October 15, 1929, with a knowledge of the fact that the potential production of said field greatly exceeded the reasonable market demand for production from said field and that if waste therein was to be prevented and ratable taking enforced, proration orders of the defendant Commission would necessarily have to be made and enforced; and that plaintiff drilled its said wells in said field in the Summer and Fall of 1930 with a full knowledge of the existence of proration orders issued by said Commission affecting all the wells then in said field and such

as should be later drilled therein. They further allege that [fol. 102] plaintiff built its pipe line, alleged in its bill of complaint to have been constructed, whereby it has a pipe line connection between its wells in said field and its refinery at Enid, Oklahoma, after the completion of its first producing well in said field, and completed said pipe line on or about September 10, 1930, and did so with a full knowledge of the existence of said proration orders then outstanding affecting said field, and that if plaintiff complied with said orders it would be allowed to produce only its ratable share of the allowable production in said field. They allege that plaintiff made no protest to the defendant Commission or any of the defendant Commissioners against the existence, validity, or any of the terms of said orders, prior to the filing by plaintiff of this suit on September 15, 1930, which was after the completion of said pipe line. They further allege that at the time of the making of the Commission's order of October 28, 1930, pleaded by the plaintiff, the potential capacity of the plaintiff's two wells in said field was approximately 10400 barrels per day, and that at the same time the total potential capacity of all producing wells in said field was approximately 2,800,000 barrels per day, and that at said time the reasonable market demand for crude oil in said field was 131,095 barrels per day.

6. They admit that plaintiff is the owner of oil and gas leases on the lands described in paragraph VI of said bill, located in Seminole County, Oklahoma, but allege that said leases were acquired by plaintiff after the passage and approval of the Oklahoma Oil Conservation Act attacked by plaintiff. They allege that the lands held under lease by plaintiff in Seminole County, described in said paragraph VI of its bill of complaint, are in two separate tracts, and held by plaintiff under separate oil and gas leases; that one of said tracts of land, namely, the E2 of the SE4 of the NE 4 of Section 14, Township 7 North, Range 6 East, Seminole County, Oklahoma, contains 20 acres of land, more or less; that same is located in what is known as the "Little River" [fol. 103] oil field, being a part of the so-called "Greater Seminole" oil field; that three of the nine wells alleged by plaintiff in paragraph IX of its bill to have been drilled on said leases in the Greater Seminole field were drilled on said 20 acres of land, its Well No. 3 thereon being a twin well to

its Well No. 2 thereon, and said Well No. 3 was drilled and completed into a producing horizon above the depth at which Wells No. 1 and 2 were completed—being one well in the center of one ten-acre tract and two in the center of the other ten-acre tract; that said Little River oil field cover about six and one-half sections of land and that approximately 373 producing oil wells have been drilled therein, including plaintiff's said three wells, and that plaintiff's wells are located in about the center of said field, and that seven other companies own each a separate lease adjoining or cornering the land covered by plaintiff's said lease, and that there are ten wells—each well in the center of a ten-acre tract—offsetting the same either directly or diagonally, so that said twenty acres of land is completely surrounded by other producing wells belonging to other companies; that in said field as a whole the wells are located, generally speaking, one well to each ten acres of land; that the wells in said field have a potential production of approximately 43,000 barrels per day; and that the allowable production under the order of the defendant Corporation Commission dated October 28, 1930, conforms to the reasonable market demand and is 21,243 barrels per day or about 50% of the potential production of the wells in said field.

They further allege that the other tract of land, namely, the S2 of the SW4 of Section 9, Township 6 North, Range 6 East, Seminole County, Oklahoma, on which there is an oil and gas lease owned by plaintiff to the extent of an undivided one-half interest, is located in what is known as the "Konawa" oil field, which comprises a part of the so-called "Greater Seminole" oil field; that the 80 acres of land covered by the said lease is located in the north end of said [fol. 104] oil field and that six of the nine wells alleged by plaintiff in paragraph IX of its bill of complaint to have been drilled on its leases in the Greater Seminole field have been drilled on said eighty acres of land, there being one well to each ten acres of said land, except the east twenty acres thereof on which twenty acres no well has been drilled; that said Konowa field covers approximately two and one-half sections of land and there have been drilled (on 10-acre locations) offsetting the plaintiff's said six wells to the north, northwest, west, southwest and south, so that said land is surrounded on all sides, except the east, by pro-

ducing oil wells belonging to other companies; that the wells in said Konawa field have a potential production of approximately 84,000 barrels per day, and that under the order of said Commission dated October 28, 1930, the allowable production from said field conforms to the reasonable market demand and is approximately 17,117 barrels which are allowed to be produced at the rate and on the basis set forth in paragraph 12 of the decretal part of the said order of October 28, 1930.

7. Defendants admit that plaintiff is the owner of an oil and gas lease covering the lands in Garfield County, Oklahoma, described in paragraph VI of said bill of complaint, on which there is a producing well and near which there are no other producing wells, but defendants are without knowledge that the plaintiff owns oil and gas leases on approximately 600 acres of land surrounding said well. They deny that there are no correlative leasehold owners of oil and gas rights in the pool where said well is located and from which it obtains its production and that there are no neighboring oil and gas lessees whose lands are being drained by said well, and aver that oil and gas leases are held by other operators around plaintiff's described holdings in said county and that other wells are being drilled on such surrounding acreage in search for oil from the same producing formation from which said well of the plaintiff is producing; and they further aver that plaintiff's said producing well came into production on or about May 29, 1930.

[fol. 105] 8. Defendants allege that the plaintiff never at any time prior to September 15, 1930, when it filed this suit, sought any relief against the issuance or enforcement of the proration orders of said Commission which had theretofore been issued, beginning with the order of Aug. 9, 1927, although many of said prior orders affected its then-existing production in the Greater Seminole Area, and did not seek any such relief until after the completion of its first well on its extremely small town lot lease, its .48 acre lease, in the Oklahoma City field, and the completion of its pipe line into said field when its situation became for the first time one where, if it could prevent the enforcement of the Conservation Act of Oklahoma and the said proration order then in force affecting said Oklahoma City field, it

could and would gain an unfair and inequitable advantage over other producers whose wells are upon larger tracts of land in said field than plaintiff's and not having their own outlet for their oil; and they say that, by reason of these circumstances, the plaintiff is guilty of laches and that plaintiff acquiesced in the enforcement of said law prior to the time when it could gain a decided advantage over its neighbors by striking it down, does not come into this court with clean hands, and now seeks the aid of this court to gain an unconscionable advantage over others.

9. They admit that the Oklahoma Legislature passed the laws pleaded by plaintiff.

10. They admit the making and entry by the defendants Fred Capshaw, E. R. Hughes and C. C. Childers, as Corporation Commissioners of the State of Oklahoma, and acting as such Commission, of the various proration orders, including the findings of fact and the decretal parts thereof, pleaded by plaintiff, copies of which are attached to said bill of complaint. They deny that the findings of fact in paragraph "F" of the Commission's order of June 30, 1930—No. 5189—was without any evidence before said Commission.

[fol. 106] 11. Defendants allege that before either of the said orders of June 30, 1930, August 30, 1930 and October 28, 1930, was made, a petition was filed, in each instance with the defendant Corporation Commission in which facts and circumstances were set forth, which, if true, made it the duty of said Commission and members thereof to proceed in accordance with the provisions of said Oil Conservation Act to conduct a hearing and determine whether or not orders, rules and regulations should be made and prescribed for the enforcement of the provisions of said Act, and praying for the making and entry of orders, rules and regulations accordingly; that said petitions respectively were duly set down for hearing at a time certain, and at the office of the said Commission in the Capitol Building at Oklahoma City, Oklahoma, and that in each case the said Commission issued a notice to all persons and classes interested, advising of the time and place of the hearing, and caused same to be published in a newspaper of general circulation in said state, and in addition thereto, issued and caused to be duly served a notice in writing to all persons,

firms and corporations, including the plaintiff herein, known to the Commission to have any interest in said proceeding; and that in each such instance, the Commission, at the time and place fixed, conducted an open public hearing on the said petition at which many persons interested in said matter personally appeared, and that the Commission then and there received and heard evidence fully establishing, in each instance, the necessity for the orders sought, and expressly offered to all persons interested an opportunity to be heard, and that at the conclusion of the hearing in each case, said Commission made and entered its findings of fact and its orders, rules and regulations as con-
[fol. 107] tained and set forth in the said three orders respectively, as shown by the copies thereof attached to plaintiff's bill of complaint.

12. They allege that the curtailment of the production of oil in each of the oil fields and pools affected by the said orders respectively and by the rules and regulations therein set forth, was to an amount of oil which, from the evidence before the Commission, conformed to the reasonable market demand for crude oil in said fields or pools respectively, and further allege that at the times of making and entering the said orders respectively, the potential production of the wells in the said fields, respectively, greatly exceeded the reasonable market demand for crude oil in said fields respectively, as was found by the said Commission at the time of making and enterng the said orders, and that such excess of potential production over reasonable market demand continued throughout the period of time that the said orders continued in force, and that there is at this time a very large excess of potential production in said fields over and above the reasonable market demand for oil in said fields, and they state that it was necessary that the said orders be made and entered in order to prevent those wastes of crude oil in said fields which are defined and prohibited by the said Oil Conservation Act. They allege that the amount of the potential production of each of the pools placed under proration in and by the said orders respectively, was found by the said Commission, and was at the dates, respectively, of said orders, the amounts, respectively, stated in the said orders in the
[fol. 108] case of each such pool and that the amount of

the then existing reasonable market demand for crude oil in each of said pools, respectively, is stated and set forth in said orders.

They allege that the Oklahoma City field has been in a condition of constant development and expansion, ever since it was opened up in December, 1928, and additional wells are at this time being drilled therein; that the wells are of the unusual depth of over 6,000 feet, the area of prolific production is unusually large, the wells have ranged in initial potential capacity from 2,500 to 90,000 barrels per day, that some of the largest wells have been completed during recent months, and that the gas pressures in the producing formations are the highest encountered in any field in the state, being, usually, initially in excess of 2,000 pounds to the square inch. They further state that said field is the youngest field of consequence in the state, and came into production at a time of overproduction of oil elsewhere in the state and in the nation, and at a time when the common purchasers of oil had no desire to purchase from new fields, with the result that at least as early as the Fall of 1929, by which time a number of wells of large capacity had been completed in said field, the reasonable market demand for oil in said field has been far below the potential capacity of its wells; that in its order of October 28, 1930, the Commission found that the potential of said field had increased to 2,800,000 barrels per day, and additionally, it made the following findings of fact, namely:

"The Commission finds that the full potential production from the Oklahoma City pool cannot be produced without waste, including physical waste and waste incident to the production of crude oil or petroleum in excess of the reasonable market demand, and that the reasonable market demand from said pool at the present time is approximately 131,095 barrels per day, and that in the month of November said reasonable market demand from said pool will be approximately 134,589 barrels per day, and that in the month of December the reasonable market demand from said pool will be 131,003 barrels per day, and that the market demand herein named is somewhat contingent upon transference by the purchasing companies of purchasing power from the 'Class A' pools herein to the Ok-

lahoma City pool and upon ability to transfer pipeline connections, and the Commission therefore finds that the [fol. 109] orders, rules and regulations should be made sufficient flexible so that increases or decreases in market demand from said Oklahoma City pool and increases or decreases in potential production therefrom, can be recognized by ancillary orders of the Commission, and that for this purpose the Umpire and Operators' Committee should be instructed to compute from time to time, the rate of curtailment necessary in order to conform the permitted to the reasonable market demand from the said Oklahoma City pool and to report the same to the Commission with the facts in support thereof as a basis for such ancillary order; it being understood, however, that whatever reasonable market demand develops for crude oil from the Oklahoma City pool shall be prorated among all the producing wells therein, so that each well will be permitted to produce its proportionate share of the amount of oil that may be produced from said field without waste."

In said order of October 28, 1930, from the evidence before it, the Commission further found as facts the following, to-wit:

"The Commission finds from the evidence that crude oil and natural gas occur together, or in close proximity to each other in the ground, and that there is a common gas pressure throughout a common pool which exerts an energy or force to move the gas and oil toward the point of least resistance, and, therefore when wells are drilled into a pool or structure the oil and gas become migratory, and, having the power of self transmission, will move from one property to another, underground, in such pool; and that when some of the wells in such a common pool are permitted to produce at a greater proportion of their capacity than others, drainage occurs from the less active to the more active wells, if such disproportionate condition is continued; that in the Oklahoma City pool there is a heavy gas pressure which would cause such drainage should disproportionate taking of crude oil and gas be permitted; that the history of the oil producing business in this and other surrounding states shows that in the case of flush pools where proportional taking from the wells is

not enforced, and where the full production from the pool cannot be taken, either because of inadequate transportation facilities or because the reasonable market demand does not equal the potential production, producers who do not have physical or market outlets will be forced to produce their wells to capacity in order to prevent drainage of the oil to the wells of such producers as do have adequate physical or market outlets. In such cases, in the absence of adequate steel storage available to every producer, some of them will flow the oil into earthen pits. This has occurred many times in the oil pools in Oklahoma and surrounding states and has always caused actual physical waste of the crude oil through evaporation, leakage, and washouts to a very large extent. The Commission finds that this would be the case in the Oklahoma City field, and in many other fields of the state if production were not curtailed as provided in this order.

"The Commission further finds that to permit the wells in the Oklahoma City field to flow wide open and continuously, without limitation as to time, would cause serious underground waste."

[fol. 110] 13. They further allege that although the plaintiff herein was a party to the said proceedings in the case of each of the said orders, and had been duly notified of the hearings to be conducted, and had actual advance knowledge thereof, it made no objection and took no exception to the said orders at the time they were made nor afterwards (except as hereinafter stated), took no appeal therefrom or any thereof to the Oklahoma Supreme Court and did not and has never at any time sought to obtain any order of the Supreme Court of Oklahoma suspending or superseding the enforcement of said orders or any thereof, and that, therefore, the plaintiff has waived its right to now question the validity of said orders or any thereof or any part thereof, either in this suit or otherwise; except that the plaintiff, through its president, H. H. Champlin, did appear at the hearing conducted upon the said application upon which the said order of October 28, 1930, was based, and he, the said H. H. Champlin, testified as a witness in opposition to the granting of any order based on the application for said order, and in his testimony stated substantially the same facts with reference to the ownership by plaintiff of oil

wells and production and of a refinery and pipe line as are set forth in paragraphs V to X, both inclusive, of its bill of complaint filed herein; but the plaintiff failed to except to the said order of October 28, 1930, when entered or afterwards, or to take any appeal therefrom, and made no objection to this Commission or the members thereof, other than in the testimony given by him, as aforesaid, and did not appeal therefrom to the Supreme Court of Oklahoma as it had the absolute right to do under the laws and Constitution of Oklahoma, and sought no suspension or supersedeas of said order or any part thereof at the hands of said Supreme Court, as under said Constitution and laws it had a right to do; and with the further exception that plaintiff did, on November 7, 1930, as alleged in paragraph XXXIII of its bill of complaint, file with the said Commission a written special appearance and motion to vacate the order of October 28, 1930, and the rules and regulations therein [fol. 111] prescribed wherein it prayed for the vacation of said order and other prior proration orders affecting plaintiff at least in so far as plaintiff was concerned, and that in any event the Commission order a suspension as to plaintiff of the penalty provisions of the statute during the pendency of this suit. They admit that plaintiff's said motion was set for hearing and was heard on November 20, 1930, and that it was denied on November 21, 1930, but they allege that plaintiff failed to take any appeal from the said action of the Commission on the said motion; and allege that the plaintiff has not attempted to avail itself of the remedies provided by the laws and Constitution of the State of Oklahoma to obtain any vacation or modification of the said order or any part thereof, or any suspension or supersedeas thereof.

14. Defendants admit that the defendant Commission did not curtail the production of crude oil in the smaller fields in said state in either its order of June 30, or that of August 30, 1930, and allege that this was for the reason, among others stated in said orders, that at said times said smaller fields and each of them had an adequate market outlet for the oil produced therein, so that the full production from each of said pools could be and was being produced and taken without waste. That in making said orders and the order of October 28, 1930, said Commission classified the various oil fields in the state on the basis of the existing

relation between the potential production of each pool and the amount of the crude oil which could be produced therefrom without waste; and that because said relation was not the same in all the pools involved, the percentages of curtailment necessarily varied as between pools.

[fol. 112] 15. Defendants deny that they, acting as the Corporation Commission of Oklahoma, made, entered and promulgated said orders attached to said bill of complaint, or either of them, without having heard the testimony of any witness under oath, and without having heard and considered any sort of legal or competent or adequate evidence upon which to base said orders or either of them; and in this connection state and allege that said orders were made and entered after the hearing of testimony of witnesses under oath amply competent and adequate, and in fact overwhelming, to sustain and support the said orders and each of them, and particularly the order now in force, that is, the order of October 28, 1930. In this connection defendants further state and allege that the facts upon which said orders were predicated were so widely and generally known within the State of Oklahoma, that said Commission and the members thereof would have been justified in taking judicial notice thereof, and without evidence, to have made the orders which, upon evidence, they did make. They further state and allege that the remedy of the plaintiff for an attack upon the said orders or either of them, upon the ground that the Commission made and entered same without any legal evidence upon which to base the same, if it were true that there was no such evidence before the Commission, was by appeal to the Supreme Court of Oklahoma for review upon that ground and for reversal of the said orders upon that ground, and not by injunction as herein sought. As to the extension order of September 30, 1930, No. 5337 made in cause No. 10,146, extending said order of June 30, 1930, No. 5189 and said order of August 30, 1930, No. 5292, (made in said mentioned cause) in full force and effect until and including October 10, 1930, defendants allege that because of the pendency of the suit of C. C. Julian Oil & Royalties Company in the Oklahoma Supreme Court, and of this suit, no one applied to the Commission prior to October 1st, 1930, for a new order; and that, while it is true no witnesses were sworn and testimony [fol. 113] received on September 30th, 1930, yet an appli-

cation was filed with said Commission for the making of said extension order, and said Commission and the members thereof had knowledge that in general the facts and conditions which existed and by reason of which said orders originally issued had not substantially changed, from records made and kept by the umpires and from other sources, and that an extension order was necessary in order to prevent waste after September 30th, and until another hearing could be conducted as the basis for a new order, and said extension order was made pursuant to authority so to do reserved in said extended orders. In this connection they allege that on October 10th, 1930, while the hearing was in progress upon the petition for a new order which resulted in the order of October 28, 1930, the Commission further extended said orders of June 30, 1930, as modified by said order of August 30, until the further order of the Commission, and that same remained in force until the entry of the order of October 28, and this was done for the same reasons and by virtue of the same authority.

16. They admit that in the order of June 30, 1930, shown by Exhibit "A" attached to plaintiff's bill of complaint, Ray M. Collins was appointed by said Commission as its umpire and was authorized to employ assistants to aid him in administering said rules and regulations, and that said Ray M. Collins is now and has been for many months prior hereto, the umpire of the defendants, purporting to act, and they allege that he has been so acting, as the agent and representative of said Commission, but they deny that said Collins is not now and never has been a legal agent of said Commission and that he is not now and never has been an officer of the State of Oklahoma with authority to act in respect to the matters covered by the said act approved February 11, 1915, or the rules and regulations made thereunder by said Commission. They admit that in the order of October 28, 1930, No. 5369, the defendants again appointed Ray M. Collins as umpire and agent of the Commission to enforce the rules and regulations therein made, and authorized him to employ as many assistants as he [fol. 114] should deem necessary, and in this connection they allege that the appointment as aforesaid, of said Collins as such umpire was made with the consent of the Governor of the State of Oklahoma, as authorized by the provisions of Section 5 of the said Conservation Act. They

deny that said Collins at any of said times was the paid employee and representative of numerous persons, firms and corporations producing oil in the various fields of Oklahoma, and engaged in the manufacture of refined products and marketing the same in competition with complainant. They admit that said Collins for his services in acting as said agent and umpire of the Commission, is now and has been receiving a monthly salary at the rate of $2000.00 per month, but deny (subject to the explanation hereinafter made) that he has been receiving the same from various firms, persons and corporations engaged in the production of crude oil in Oklahoma, and the refining of crude oil in competition with complainant, and admit that said Collins has never been paid nor promised by the State of Oklahoma or any political subdivision thereof, any compensation for his services as umpire and agent of said Commission, and in this connection they allege that the compensation paid to said Collins for his services as agent and umpire of said Commission as above admitted, has not been and is not being paid by any individual or faction, but that the manner of its payment was and is as follows, to-wit: There being no public funds available out of which the said Commission could or can pay said compensation, said Collins has received his compensation out of a common fund created by proportional assessments voluntarily made by consent of practically all producers interested, and levied on practically all the oil producers interested in the oil fields in which said Collins has served and is serving: They admit that said Collins has at all times acted in conjunction with a so called Operators' Committee, composed of various individuals producing oil in Oklahoma, and representatives of firms and corporations producing crude oil in Oklahoma fields, but are without knowledge that the firms or corporations with which they are associated are manufacturing [fol. 115] the refined products from crude oil and marketing the same in competition with plaintiff, and they deny that said Collins has at all times or at any time acted in the service of said so called Operators' Committee and/or said representatives of firms and corporations. In this connection they allege that said Collins has acted solely in the service of said Commission and that in each oil field placed under proration by the said orders, a so called Operators'

Committee, composed of producers in said fields respectively, were selected and appointed by said Commission, and that such Operators' Committees were merely advisory committees, the members of which served without compensation. On November 3, 1930, said Commission issued its order as shown by journal entry 1822, appointing said umpires and Operators' Committee as agents of the Commission to enforce said orders and the Governor of Oklahoma consented thereto in writing, all as shown by a copy of said journal entry hereto attached, marked Exhibit "11" and made a part hereof.

17. Defendants state that the orders of the Corporation Commission complained of are exceedingly difficult of enforcement not because of any uncertainty in the rules and regulations of the Corporation Commission to prevent waste, but because of the peculiarly technical and complex nature of the business of producing oil. That, accordingly, to enforce said regulations against waste, it became necessary to obtain and utilize the advice of practical oil men; that, accordingly, in addition to the services of said umpire, in respect of each district brought under restraint, under the orders of the Corporation Commission, an Operators' Committee, entirely familiar with the peculiar producing conditions of the particular pool was thought by the Commission and has been found to be helpful as an adviser to the Umpire in enforcing the prescribed and definite rules of proration laid down by the Corporation Commission. [fol. 116] That it was because of these circumstances that an advisory committee of operators interested in each pool put under proration was provided for in the orders of the Corporation Commission complained of. And, although the function performed by them was to advise with the umpire regarding the enforcement of the specific rules and regulations of the Corporation Commission, by virtue of their appointment by the Corporation Commission, consented to by the Governor, they became the agents of the Commission, within the terms of said Conservation Act. That the function of the umpire was to enforce the specific rules of the Corporation Commission complained of in plaintiff's bill involving vast detail and a technical and practical knowledge, so that each operator, including the plaintiff, in a particular pool brought under restraint should be subject to an equal and equitable restraint in

comparison with that imposed upon all the other operators in the pool. They allege that plaintiff has never at any time complained to the defendants or any of them that any member of any of the Operators' Committees was not fitted for his position or has acted unfairly or impartially; nor has plaintiff sought any change in the personnel of any of said committees.

18. They admit that the Commission's said Order No. 5189 made on June 30, 1930, contains the provision copied in paragraph XIX of said bill, and that said Order No. 5369 made on October 28, 1930, contains the provision copied in said paragraph XIX of said bill; but defendants state that said provision in the order of June 30, 1930, as quoted in said bill is preceded by the following language:

"Where percentage proration is applied a gauge of producing wells shall be taken by the Umpire or under his supervision in the following manner:"

and the provision in the order of October 28, 1930, is preceded by the following language:

"Where percentage proration is applied a gauge of producing wells shall be taken in the following manner:"

and is followed by the following language:

[fol. 117] "During the time this Order is in force a similar gauge of each property shall be taken from time to time as the Umpire and Operators' Committee may designate but not less than once each month, except that in the entire Greater Seminole area, aside from South Earlsboro, East Earlsboro, East Little River, Sasakwa, Konawa, West Asher-Wanette, Earlsboro Townsite and Wilcox wells in Allen pools, and in the 'Class A' pools, the gauge may, upon direction of the Umpire, be determined by applying the proper decline curve for each lease so gauged."

19. They deny that the oil wells in the Oklahoma City field have never been gauged by the said Commission or by any competent and legally qualified agent of said Commission or legal and qualified officer of the State of Oklahoma, and deny that the Commission's findings of the potential production in the Oklahoma City field set forth in

the various orders, were not based upon any gauge of the wells in said field, and that the Commission's findings of the potential production in the Seminole field and other fields set forth in said orders, were not based upon any gauge of the wells in the said fields respectively, and that no legal and lawful gauge as provided by the Oklahoma Statutes, has ever been made by said Commission or under any valid rules prescribed by it, and allege that neither Section 7958, Compiled Oklahoma Statutes, 1921, nor any other provision of the law, requires that said wells be gauged by officers of the State of Oklahoma or agents employed or appointed by said Commission, with the consent of the Governor, but only that they may be gauged under rules and regulations to be prescribed by said Commission, and they state that rules and regulations for gauging all wells operated on a percentage basis were prescribed and incorporated in said orders, and that all wells so operated were gauged by or under the direction of the Umpire in accordance with said rules and regulations. They state that in practice there are two methods whereby the wells in a given field may be operated to accomplish the taking from his well or wells, by each producer, of only that proportionate part of all the oil that may be produced from such field without waste as the production of the well or wells of such producer bears to the total potential pro- [fol. 118] duction of such field, one being the so-called "percentage basis" and the other the so-called "time basis." By the percentage basis of proration, each well owner, by the application of back pressure on each of his wells, while operating same continuously, restricts the flow of oil therefrom so that in the prescribed period of time, it produces its proportionate part of the allowable production from the field; and by the time method the wells are grouped into classes and the owners of one group of wells operate their wells to full capacity for a fixed short period of time while all other wells in the field are shut in, then the wells of another class are so produced, and so on, with the result that each well is on full production for a fixed short time and is then entirely closed until its turn again so to produce is reached; and they state that the wells in all fields affected by said orders except the Oklahoma City field have been operated on a percentage

basis; and that the Oklahoma City field has been operated on a time basis, and that the potential capacities of the wells in said Oklahoma City field have been determined by ascertainment by the umpire, from day to day as said wells were on production, of the amounts produced by said wells, respectively, when on production from time to time.

20. They deny that various persons, firms and corporations owning and operating oil wells in the Oklahoma City field, the Greater Seminole field and some of the other fields, organized what is known and referred to in the Commission's rules, regulations and orders complained of by complainant as an "Operators' Committee" and state that several Operators' Committees for the several prorated fields covered by said orders, were suggested by said Ray M. Collins, Umpire, approved at meetings of producers duly called, at which all the producers in said fields respectively, were notified and given an opportunity to be present, and that their appointment by the said Commission (with the consent of the Governor) was an exercise of the independent judgment of said Commission.
[fol. 119] They deny the import of the allegations of paragraph XXI of plaintiff's bill of complaint relating to the appointment and function of an Operators' Committee, to the effect that there is one Operators' Committee for all the prorated fields, and allege that there is a separate Operators' Committee for each prorated area.

21. They deny that the Operators' Committee (for the Oklahoma City field) procured the Commission to name one of their employees, Otto B. Bradford, as the so called umpire for the Oklahoma City field, and state that said Bradford is not and has never been an employee of any member of said Committee, and allege that said Bradford was nominated as assistant umpire and assigned to said field by Umpire Ray M. Collins, and his employment and appointment were made by said Commission with the consent of the governor of said state. They deny that said Bradford acts under the direction of the Operators' Committee for said Oklahoma City field and allege that he acts under the direction of Ray M. Collins, umpire for the state as a whole, and said Commission. They admit that it was the business of said Bradford as said umpire, to see that the producers of oil in the Oklahoma City field keep their

wells closed down uder what is known as a time proration basis (a method hereinbefore explained), but deny that it is his business to see that production is allowed in said field upon an unfounded and unwarranted estimation of the potential production of said field, and deny that no gauge was ever made of wells in said field as required by the statute. In this connection they allege that by order of said Commission, entered originally in 1929 at the request of all the then producers in said field, and continued in force from time to time since then, at the request of a majority of the operators therein, the Oklahoma City field has been operated upon the time proration basis. They aver that the plaintiff has never protested to defendants against said [fol. 120] method of operating said field or complained to defendant that the potential production as ascertained by the Commission or the Umpire was not correct, and they allege that they are informed and believe and therefore allege that at a recent meeting of the Oklahoma City field producers, a vote was taken on a motion to recommend to the Commission that it order said field to be thereafter operated on a percentage basis, and that a duly authorized representative of plaintiff who was present, voted against making the change. They further allege that the present time basis order applicable to said field was made and entered after a full hearing at which many witnesses testified and that same is amply supported by testimony. They say that at the meeting last above mentioned, the Oklahoma City field operators by a majority vote adopted a resolution recommending to the Commission that said field be operated upon the percentage basis, and they say that application for such change is now pending before said Commission and that several hearings thereon have been conducted and said Commission has same under advisement. They admit that Otto B. Bradford has never received nor been promised any compensation by said state or any authorized agent or political subdivision thereof, for his services as Umpire. They deny that said Bradford has been receiving compensation from said Operators' Committee for his services, and deny that all or any of his acts or deeds have been illegal and unauthorized by any valid rule and regulation of the Commission or by the provisions of any statute of said state, and they allege there being no public funds available out of which the Corporation Com-

mission could pay said Bradford for his services, he has received his compensation out of a common fund created by proportional assessments voluntarily made by consent of and levied upon practically all producers in said field.

22. Answering the allegations of paragraph XXII of said bill of complaint, these defendants allege that the plan set forth in said orders for gauging the wells affected by said orders, is a practical and workable plan, designed to accomplish fair, true and equitable gauges of said wells, and [fol. 121] same was and is authorized by the provisions of said Conservation Act, and that the complainant has not at any time made objection before the defendant Corporation Commission that the said plan is not fair and practical, or that it does not accomplish a true and correct gauge of the wells, and has never sought any modification by said Commission of the said orders or any of them in this regard, and they deny that the said rules, regulations and orders of the Commission are each and all, or any of them, void, in that in not providing for notice of the taking of gauges of wells, except as provided in said orders, they deny the plaintiff due process of law or the equal protection of the laws guaranteed to plaintiff by the Fourteenth Amendment; and they further aver that the matter, method and manner of gauging said wells in order to determine the potential production thereof, is an administrative and ministerial function.

23. Answering the allegations of paragraph XXIII of said bill of complaint, defendants state that the reason no operator in the Oklahoma City field has stored crude oil in earthen tankage or permitted it to run at large on the surface of the earth (except in the case of a few wells that, by reason of the extremely high pressure in the underground oil and gas reservoir, became uncontrollable and ran wild for several days) is because of the existence and enforcement of the proration orders herein complained of, and the orders which preceded them, and they aver if the said orders had not been made and plaintiff had been heretofore permitted to produce its wells to capacity or substantially to capacity, then plaintiff would have drained a large part of the oil from under the lands of its neighbors and additionally wold have caused underground waste of oil, or, its neighbors, in an effort to protect themselves, would have

produced and wasted immense quantities of their own oil in earthen storage and otherwise.

24. Defendants state with reference to the sections of said Conservation Act which are involved herein, that is to [fol. 122] say, all the sections thereof except Section 2, being 7955 C. O. S. 1921, (as to the validity of which excepted section the defendants make no allegation for that the Commission has not acted thereunder in the orders herein involved,) that they are not invalid under the Fourteenth Amendment to the Constitution of the United States for that oil and gas are irreplaceable natural resources of the State and while in the ground possess the power of self-transmission from place to place, and First, the Legislature of Oklahoma, acting under the police power, had and has authority to regulate and restrict the use and enjoyment by landowners within the said state of the natural resources of the state, including oil and gas, so as to protect said resources from waste; and, Second, said Legislature under the police power was possessed with authority to regulate and restrict the use and enjoyment by landowners within said state of the oil and gas in and under their lands so as to prevent the infringement by any of such landowners of the rights of others to extract and reduce to possession their respective fair and equitable proportionate parts of the oil and gas in the reservoirs beneath the lands of all; and, Third, said Legislature possessed the power to reach the end of so protecting the said rights of the several land owners in a common source of supply of oil and gas by legislation designed to prevent waste.

Defendants aver that in the enactment of said Act approved February 11, 1915, the Legislature of Oklahoma was dealing not only with a natural irreplaceable resource, but also with a peculiar species of property of vast importance and consequence to the State of Oklahoma as a proprietor and to the economic welfare of the people of said state. Defendants aver that oil and gas under ground possess characteristics not shared by other species of property. That the typical oil reservoir in the state of Oklahoma and in the other American states, including the Oklahoma City oil pool, the Greater Seminole oil area and the other fields in respect of which complainant complains, is characterized by the following conditions:

[fol. 123] (1) Oil and gas exist in the ground in sedimentary rocks, being a porous, sandy strata, or in lime formations, varying in texture and porosity, and these are called oil pools.

(2) They exist in their undisturbed state under pressure, often quite high.

(3) In said pools both oil and natural gas will be encountered as the occupants of the same reservoir.

(4) There will be a quantity of free gas inhabiting the higher portions of the saturated formation, such gas being almost entirely, if not completely disassociated from the oil content of said formation, but exerting a pressure throughout the same.

(5) In addition to said free gas large quantities of natural gas will be found in the reservoir dissolved in the oil contined therein which association between the oil and gas reduces the viscosity of the oil and otherwise tends to increase its mobility so that when the reservoir is penetrated by a well the propensity of the oil to migrate to the opening thus created and to be lifted to the surface is vastly augmented, and as a result of this physical condition oil may be drained from the lands of one oil operator through the well or wells of another operator penetrating the common reservoir.

(6) Furthermore, upon the penetration of the reservoir by a well the free gas at the top of the structure functions in such way as to drain the oil originally inhabiting one tract of land to the tract penetrated by the well.

(7) The free gas at the top of an oil structure and the gas dissolved in the oil therein constitute what in the oil industry is defined as the "gas energy" of the particular pool, and the gas energy of an oil pool is the chief agency in moving petroleum laterally to a well penetrating the reservoir, and also in lifting it to the surface for recovery for commercial purposes.

(8) Until such time as the pressure called "gas pressure" in the reservoir is dissipated through wells drilled into the reservoir, the oil and gas flow through the wells,

when opened; thereafter the oil is usually extracted by pumping.

[fol.124] That the characteristics of oil and gas hereinbefore mentioned apply to all the oil properties described in plaintiff's bill, and the pools wherein they are situated. That these characteristics establish a community interest in the gas energy or pressure of an oil pool between and among all of the proprietors having rightful access to the particular reservoir, by reason of the fact that should one oil operator therein wastefully or inefficiently or disproportionately use said gas energy or pressure to produce his oil, such use to the extent of such waste or that it is improper, deprives the other oil operators in said pool of the right to recover the quantity of oil from their lands which they might recover if there were no such waste of gas energy or pressure or no inefficient or disproportionate use of the same. Accordingly, by the nature of the subject matter dealt with correlative rights and obligations apply to an oil and gas pool. No operator therein may disproportionately use the gas pressure or energy of the pool so as to take from the pool a disproportionate part of the oil content thereof, without at the time, and by so doing, seriously injuring the co-equal right of other surface proprietors to use said energy and extract the oil, and at the same time produce underground waste. As has been alleged, at the time of the making of the orders herein complained of, and at the time of the filing of this suit and at all times since then and now, the potential production of the Oklahoma City pool and each of the other pools where plaintiff's wells are located, greatly exceeded and exceeds the reasonable market demand for oil therein, as is shown on the face of said orders. The facts [fol. 125] last alleged demonstrate that it is not possible to market all of the oil production from either of said areas. Complainant states that it is in position to take all of its production, both from the Oklahoma City pool and from the Greater Seminole area and the other fields where it has wells, but defendants aver that all of the oil operators therein are not only unable to market all of their production therefrom, but only a part thereof, and in the Oklahoma City pool a very small part thereof, and that if complainant shall be permitted to take all of its

production from said pools, such action on its part would destroy the community nature of the gas energy in each of said pools, and in so doing, the complainant will be able to produce more than its proportionate share of the production from said pools to the destruction of the property rights of the other operators in said pools, and will cause waste; if the complainant shall be permitted to do one of the things designed to be prevented by the statute recited in complainant's bill, that is to say, instead of submitting to a proportional taking of oil from each of said pools, each operator thereby being permitted to produce such proportion of the market outlet of the pool as his potential production bears to the potential production of the pool, complainant would be permitted to produce all of its oil to the irreparable detriment of the other operators in each of said pools, by draining the oil from their properties and causing them to commit waste by flowing their oil into open earthen storage because of inadequate market outlets for their oil. The said statute was designed to prevent both the evil of commission of waste and the evil of disproportionate taking on the part of several operators in a common pool when the full production therein cannot be had without waste, and thus to prevent the consequences above enumerated growing out of permitting the complainant herein to produce without restraint the oil from its wells in the said pools where there is a grossly inadequate market outlet.

Defendants aver that the said Act was adopted by the Legislature of Oklahoma in order not only to prevent the waste of crude oil under ordinary circumstances, but also to prevent its waste incident to the production of crude oil [fol. 126] in excess of transportation and marketing facilities or reasonable market demands, and defendants aver that as is above explained, actual waste of crude oil occurs as an incident to the production of crude oil in excess of transportation or marketing facilities or reasonable market demands, and that additionally, and as an incident to the prevention of waste under the said circumstances, said statute had as one of its purposes the protection of the coequal rights of the several land owners in a common source of supply of crude oil against the taking by anyone thereof of an unfair and disproportionate part of the oil content in such common source of supply. In this connection de-

fendants allege that prior to the enactment of said statute and its approval on February 11, 1915, as at all times since its enactment, there were and have been three classes of oil operators in the State of Oklahoma, namely: First, the completely integrated unit which produced, transported, and refined petroleum and marketed the products thereof; Secondly, the quasi-integrated unit which produced, transported and marketed crude petroleum; Thirdly, the non-integrated unit which engaged in the sole business of producing oil. Defendants aver that in the years 1905, 1906 and 1907, the Glen Pool in Oklahoma was under active ex- [fol. 127] ploitation, and that the three classes of oil operators held producing leases therein; that the integrated and quasi-integrated units produced all the oil that they could produce from their properties, and that a non-integrated oil operator owning production alone and having no actual market for all his output was totally unable to produce all his potential production from said pool. In consequence, by virtue of the nature of the substances involved, the integrated and quasi-integrated units in the oil producing business used more of the gas energy and pressure of the pool than they were entitled to; that an integrated or quasi-integrated oil producer was able to take from his leases all the production therefrom when his neighbor or neighbors, non-integrated producers, were not able to market any oil therefrom, or to market a production therefrom bearing any equitable relation to the quantity taken by said integrated or quasi-integrated producers. That the oil industry of the State of Oklahoma passed through the same experience in the Cushing field in Oklahoma between 1913 and 1915; and in the Healdton field the condition existed of an integrated or quasi-integrated oil producer being able to produce and market all of his production from a particular oil pool, although at the time an adjacent operator or another operator in the same pool was not able to market any or at the most an inappreciable quantity of the production of his wells. As a result, the integrated or quasi-integrated operators of the state were utilizing a community property, namely, the gas pressure energy of the pools in which they were interested, to the fullest possible extent and to the overwhelming detriment of the non-integrated operators in the pool, who, by reason of the action of the integrated producer, were compelled to either submit to drainage or run

their oil into earthen storage where it evaporated and wasted. And defendants aver that to meet this evil and to establish equality of production during periods of oversupply, and otherwise to prevent waste, the Act effective February 11, 1915 was enacted.

Defendants aver that petroleum is an irrenewable and irreplaceable natural resource, and that when the oil resources of the State of Oklahoma are exhausted they cannot [fol. 128] be replenished by any human agency. Defendants aver that notwithstanding a condition of acute overproduction in the American petroleum industry at the time of the enactment of said Conservation Statute, the discovery of new petroleum resources was entirely a fortuitous circumstance; that new petroleum supplies in the state might or might not be discovered, and that the science of finding oil had not yet so advanced as to determine whether there would be an over- or under-supply of petroleum. That in consequence of the irreplaceable character of petroleum it was within the province of the state to safeguard the supply of petroleum therein so as to continue as long as possible the economic prosperity of the state as a producer of petroleum. That, in addition, the petroleum industry at that time was the second among the productive enterprises of the state, not only in the value of its products, but in the employment of men engaged in said business. That, accordingly, the predicament of the petroleum industry in said state entered largely into the general welfare and prosperity of the citizens of said state, not only through the direct employment of thousands of employees, but by their contribution to the general welfare and prosperity of the state. That, in addition, the State of Oklahoma itself owned vast tracts of land which were favorable for the production of petroleum which would add to the revenues of the state and therefore contribute to the general welfare of the citizens thereof. That it was by reason of these things, community nature of the gas pressure or energy of an oil pool, the general welfare of the people of the state of Oklahoma and the situation of the state in its proprietary capacity, that the Act effective February 11, 1915, was enacted. During periods of overproduction in the petroleum industry of said state, that Act denies to any oil operator in a pool where the market outlet does not equal the full production, the right to take all of the oil production from his

properties that they are capable of producing, and yields to them the right only to produce from their properties the same proportion of their production that the other operators in the particular pool may produce in meeting the total reasonable market demand. Defendants aver that [fol. 129] said statute provides for proportional taking, and was designed to enforce proportional taking because of the community interest in the gas energy or pressure of an oil pool, and because of the general public welfare in respect of an irrenewable and irreplaceable natural resource of vast consequence to the economic future of the state.

The complainant asserts privileges which said statute was directly designed to prevent, and which, under its police power, the state has the right to prevent. The complainant is an integrated oil producer; owns its production; owns transportation facilities from its production to its refinery, owns its refinery, and distributes and sells its own refinery products. If the complainant shall be entitled to produce all of its production in the Greater Seminole area and the said other pools, it shall obtain a disproportionate part of the gas energy which is the chief agency in the production of oil and of the oil, to the serious detriment of the other producers in said pool who are in position only to market a part of their production. The complainant by its bill seeks to deprive the other oil operators in said fields of their just share of the gas energy and oil, which between the complainant and the other operators in said pools are subjects of common property interest. Accordingly, complainant's bill, instead of having as its object the protection of a property right, has as its object the invasion of the property rights of the other owners of oil properties in said pools. Accordingly, defendants deny that the orders of defendants described by complainant are void and unenforceable for the reason that the execution of the same is in violation of the complainant's constitutional rights under the due process or any other clause of the Constitution, either State or Federal.

25. Answering the allegations of paragraph XXIV of said bill, defendants deny that the rules, regulations and orders complained of are arbitrary and discriminatory in any respect alleged by plaintiff; they allege that under said order of October 28, 1930, no wells within the state are allowed to produce to 100% capacity save only when the

[fol. 130] wells on any single lease average in daily production five barrels or less; and they further state that each oil field in said state is by said last mentioned order limited to the production of an amount of oil equal to the reasonable market demand for oil in such field, and each producer therein is restricted to the production of his proportionate amount of the oil allowed to be produced in said field, determined in the form and manner prescribed by said conservation act. They deny that plaintiff has been required and compelled by the defendants to entirely shut in its wells in the Oklahoma City field, but they allege that plaintiff has been only required to shut in its wells in said field intermittently in conformity to the time proration plan set up for proportional production by each and every operator in said field. They are without knowledge that plaintiff can produce oil from its wells for a less cost than the price it is now and will be compelled to pay for crude oil from other producers on the open market, but say that, if it can do so the fact is an immaterial one. They deny that said rules, regulations and orders even if it be true that plaintiff is compelled to purchase oil from others and to do so at a loss over what it would be able to do of it produced and refined its own oil—deny to plaintiff due process of law and the protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States; and in this connection state that plaintiff is subject to reasonable police regulations, such as is prescribed by the said conservation act and the said orders of the Commission made pursuant thereto, whether or not in obeying same plaintiff may suffer some loss which it would not otherwise be subjected to. They are without knowledge that under present conditions and conditions existing for several months prior hereto plaintiff has been compelled to run its refinery at a loss, and are without knowledge that if plaintiff were allowed to produce and refine its own production in Oklahoma without restriction, it could run its refinery at a profit or at least [fol. 131] without a loss, and say that if those things be true they are immaterial facts. They deny that said rules, regulations and orders have the effect of confiscating the property of the plaintiff and that they are for that reason unconstitutional and void; and they deny that they are in contravention of Section 2 of Article 2 of the Constitution of Oklahoma, copied in paragraph XXIV of said bill, for

the reason there stated or any other reason; and in this connection state that the Oklahoma Supreme Court, in the C. C. Julian Oil & Royalties Company case, held that they are not in contravention of said provisions of the Oklahoma Constitution.

26. They deny the allegations of paragraph XXV of said bill relating to the provision of said orders dealing with purchasers and carriers of oil.

27. They deny that many large oil corporations, firms and individuals selfishly interested in maintaining high prices for crude oil, or otherwise influenced, formed by an agreement among themselves what is known as an "Operators' Committee", in the rules and regulations of said Commission, and that said corporations, firms and individuals, or any thereof, through Ray M. Collins, or otherwise, formulated the so-called proration orders herein complained of, and in this connection state that the said orders are the independent acts and represent the good faith judgments of the said Corporation Commission. They deny that said oil companies, or any of them, entered into an agreement, combination and confederation among themselves to limit the natural output in the oil fields in Oklahoma and the United States, and thereby restrict production for the purpose of controlling the price of crude oil and its refined products and eliminating thereby the plaintiff and others in plaintiff's class as competitors, and in this connection allege that said orders, rules and regulations were made and entered by said Commissioners and said Commission in good faith and as their own independent act and judgment in compliance with their duties and the obligations imposed upon them in and by said conservation [fol. 132] act and in order to prevent the waste of crude oil and to protect the co-equal and correlative rights of the several producers and owners of oil wells in the several fields covered and affected by said orders; and they deny that the said orders are a violation of Section 8 of Article 1 of the Constitution of the United States.

28. With reference to the allegations of paragraph XXVII of said bill, relating to the suit of C. C. Julian Oil & Royalties Company against the defendants herein, and the decision of the Supreme Court of Oklahoma in said case, the defendants allege that in its opinion and decision in said

case the Supreme Court of Oklahoma denied the contention of the plaintiff in said suit that the said conservation act and the then existing and effective orders of the defendant Corporation Commission were invalid as being in violation of the provisions of the due process clause of the Federal Constitution and the similar clause of the Oklahoma Constitution and the other clauses of the Oklahoma Constitution which the plaintiff in this action alleges they violate; and further allege that by its appearance in said C. C. Julian Oil & Royalties Company case, as alleged in said paragraph XXVII of said bill, and the filing therein of the brief amicus curiæ, the decision of the said Supreme Court of Oklahoma became binding and conclusive upon the plaintiff herein, and they plead that by reason thereof the plaintiff herein is estopped to now question the validity or constitutionality of the said conservation act and/or the said orders of the Corporation Commission.

29. Answering the allegations of paragraph XXVIII of said bill, defendants deny that the said Oil Conservation Act and the separate sections thereof (other than Section 2 thereof, as to which these defendants make neither allegation nor contention inasmuch as they have not in any of the orders here involved attempted to act under said Section 2), are unconstitutional and void for any of the reasons stated in said paragraph.

30. Answering the allegations of paragraph XXIX of said bill, defendants deny that said conservation act is void in that it violates Section 1, Article 4 of the Oklahoma Constitution.

[fol. 133] 31. They deny that said act is void in that it violates Section 1 of Article 5 of the Oklahoma Constitution, as alleged in paragraph XXX of said bill.

32. They deny that said rules, regulations and orders are void in that they were made and are maintained with threats of their enforcement in excess of the defendant Commission's authority and powers, or in that they undertake to regulate, control and unreasonably hamper plaintiff's business of refining oil and marketing the products therefrom.

33. Answering paragraph XXXII of plaintiff's bill, defendants deny that they, as the Corporation Commission of the State of Oklahoma, are threatening to continue to make

and enforce from time to time for an indefinite period its present rules, regulations and orders, thereby depriving plaintiff of its rights guaranteed by the Fourteenth Amendment to the Constitution of the United States or that the defendants intend to and will make said rules, regulations and orders for a brief period of time and then shortly before the expiration thereof continue them all for the purpose of preventing this plaintiff from presenting to this court and to the Supreme Court of the United States the issue of the validity of said rules, regulations and orders and their constitutionality and the constitutionality of the Oklahoma Oil Conservation Act, and that this course of conduct has been maintained by defendants from month to month from June 30, 1930, and will hereafter be continued from month to month or for brief periods for the purpose of coercing this plaintiff and others similarly situated into an acceptance and acquiescence in their orders, rules and regulations and with the hope that this suit, or any other action commenced in the Federal Court, will become moot before a trial and decision can be had.

Defendants state that the Corporation Commission of the State of Oklahoma began establishing the present series of orders, rules and regulations to prevent waste of petroleum in the State of Oklahoma in the year 1926 under the pro- [fol. 134] visions of said Conservation Act and admit that such rules and regulations were established for comparatively brief periods of time; that this was necessary because the type of waste considered by the Commission in each instance consisted of the production of petroleum in the State of Oklahoma in excess of the reasonable market demand, although in the establishment of all such rules and regulations other types of waste incident to and caused by the production of oil in said state over the reasonable market demand were also considered and by the orders of the Corporation Commission all such types of waste were prevented. Defendants state that continuously since then, as will always be the case, they were dealing with a peculiar subject matter; that the extent of the state's production of crude oil over a considerable period in the future could never be exactly determined, and that such determination could be made only for a brief period in the future; that at the same time the demand for crude petroleum in the state at large or in any particular pool could not be accurately determined for any considerable period in the future. In

other words, defendants allege that both production and demand, as contemplated by the Conservation Act, had to be determined for brief periods of time; that as a rule said rules and regulations were established for a three months' period and even then with a regulation to the effect that production might be increased or decreased during the three months' period by supplemental order of the Corporation Commission after hearing, depending upon the extent of the reasonable market demand; that the orders complained of were made under the conditions hereinbefore alleged in pursuance of the Conservation Act and not for the purpose alleged by plaintiff. Defendants further aver that whether or not they shall make any further orders of the character complained of by the plaintiff will depend entirely upon the character of the petition, if any, that may be filed for further regulations to prevent the waste of oil, and upon due proof of the allegations of such petition before the Commission after notice of a hearing therefor given in pursuance of said Conservation Act; or, [fol. 135] if no such petition be filed, whether defendants find from conditions in the oil fields in the state that they should nevertheless conduct a hearing for such an order.

34. They admit that plaintiff has produced oil from its Oklahoma City field wells in violation of said orders, rules and regulations and that plaintiff has been cited to appear before said Commission to show cause why it should not be punished for contempt, but they deny that the defendants or any of them have threatened to visit any other penalty upon plaintiff by reason of said violation, for that, under the said act and the laws of Oklahoma, the said Commission possesses only the power to punish for contempt a violation of its orders, rules and regulations. They deny that the penalties prescribed by the Oklahoma Statutes for violation of orders of the said Commission are excessive and unreasonable, and deny that they are imposed by the statutes for the purpose of deterring anyone injured or affected by the orders of said Commission from contesting their validity or correctness in any judicial forum, and deny that the penalties prescribed by said statutes for violation of the orders of the Commission beset judicial review with such deterrents as to deny the plaintiff due process of law; deny that said penalties are so far confiscatory as to operate, or that they were intended

by the Legislature to operate so as to coerce plaintiff or any other person, firm or corporation into acquiescence therewith, and thereby forego and surrender the right to have said orders reviewed by the courts; and deny that plaintiff is entitled to an injunction restraining the enforcement of the said penalties; and deny that the defendants are threatening a receivership for the plaintiff's properties, for that under the said statute the defendants are not authorized to seek any such receivership—authority to do so being vested only in the Attorney General or any county attorney. Defendants state that the said penalties are not enormous or severe when the amount thereof is compared to the value of the oil which may be produced from the wells of plaintiff if said wells should be operated [fol. 136] in violation of said orders.

Defendants state that if the plaintiff be deterred from violating the said orders pendente lite by fear of the imposition of said penalties, it will not hereby suffer any injury whatsoever in the loss of any recoverable oil from the lands covered by its leases, and this for the reason that the owners of wells on lands adjoining and in the vicinity of plaintiff's wells are observing said orders and are not producing from the wells on their lands a greater proportionate part of the content of the reservoir than their respective ratable shares thereof as fixed by said orders, and are not draining oil from plaintiff's lands. They further allege that the loss to plaintiff by having to pay fines imposed by defendants under the penalty provisions of said statutes for violations of the said orders during the pendency of this suit, would not be comparable to the much greater losses which would be sustained by the owners of oil wells upon lands adjacent to and in the vicinity of plaintiff's wells due to drainage which would occur from their lands into plaintiff's wells if operated to the extent which plaintiff alleges in its bill of complaint it desires to operate them; and in this connection they allege that the owners of wells in the neighborhood of plaintiff's wells are operating same in obedience to the said proration orders.

They further allege that the laws of said state provide safe and adequate remedies for testing the validity of said orders, as hereinafter particularly stated.

[fol. 137] 35. They admit that plaintiff filed on November 7, 1930, with the defendant Corporation Commission, its written special appearance and motion to vacate the rules, regulations and orders herein complained of and that in said motion it set forth matters as alleged in paragraph XXXIII of said bill, except that they deny that it set forth therein substantially all the facts and allegations contained in said bill; they admit that said motion contained the prayer as copied in said paragraph XXXIII of said bill, and admit that said motion was heard by said Commission on November 20, 1930, was opposed by certain operators, and that on November 21, 1930, said Commission denied said motion, but they allege that plaintiff took no appeal to the Supreme Court from said action of said Commission, but elected instead thereof to file an amended complaint, to which this is defendants' answer, in this suit in this court.

36. With reference to the allegations of paragraph XXXIV of said bill of complaint, defendants state that they are not sufficiently advised to now assume a position on the question of law as to whether said orders are legislative acts of said Commission or are merely ministerial acts or quasi-judicial acts, and, hence, they deny that said Commission is the only tribunal provided by the laws of said state endowed with final, or any, legislative authority in making said orders; but they state that, in any event, under the provision of Section 7 of said Oil Conservation Act (Sec. 7960, C. O. S. 1921), appellate jurisdiction is conferred upon said Supreme Court to review the action of said Commission in making any order or orders under said Act, and such appeal may be taken by any person, firm or corporation shown by the record to be interested therein, in the same manner and time as appeals are allowed by law from other orders of said Commission; and said orders so appealed from shall not be superseded by the mere fact of such appeal being taken, but shall be and remain in full force and effect until legally suspended or set aside by said Supreme Court; and under the provisions of Sections 20, 21 and 22 of Article IX [fol. 138] of the Constitution of Oklahoma (the first of which empowers the Legislature to provide, as it did by said Section 7 of said Act, for appeals from actions of the said Commission in respect to matters other than

those relating to transportation and transmission companies), the Supreme Court of said state has jurisdiction to review, reverse, correct or annul any action of the Commission and, pendente lite, to suspend or delay the execution or operation thereof on appeal to it, the review to be upon the record made before the said Commission, including a consideration of the evidence introduced before said Commission and the reasons assigned by the Commission for the making of its order, rule or regulation so appealed from, and said Supreme Court has jurisdiction to consider and determine the reasonableness and justness of the action of the Commission appealed from, as well as any other matter arising upon such appeal, and may, before the appeal is finally decided, require the Commission to take further and additional evidence to be certified to said court, the only limitation upon said court being that it shall regard the action of the Commission appealed from as prima facie just, reasonable and correct, meaning, as interpreted by the Supreme Court of said state, only that the burden rests upon the party appealing to show that such order is not just, reasonable or correct and not that the order must be sustained if there is any competent evidence introduced before the Commission supporting it. On any such appeal said Supreme Court is empowered to review and weigh the evidence, and decide all questions of law and fact. Therefore, the state law provides a fair opportunity for submitting all the issues raised by the plaintiff in its bill filed herein to a judicial tribunal of said state for determination upon its own independent judgment of all of said issues both of law and fact; and said remedy is substantial, adequate and safely available to plaintiff, and hence provides for plaintiff due process of law.

[fol. 139] Wherefore defendants pray that said Second Supplemental Bill of Complaint and this suit be dismisesd at plaintiff's cost.

J. Berry King, Attorney General of the State of Oklahoma.

[fol. 140] *Duly sworn to by C. C. Childers and E. R. Hughes. Jurat omitted in printing.*

(Here follows Exhibit No. 1, side folio 141.)

[fol. 142] [File endorsement omitted.]

FOLD-OUT IS TOO LARGE TO BE FILMED

[fol. 143] IN UNITED STATES DISTRICT COURT

STIPULATION AS TO EVIDENCE, ETC.—Filed Jan. 2, 1931

Comes now the plaintiff by its attorneys represented by H. G. McKeever, and the defendants by their attorneys represented by W. L. Murphy, and stipulate as follows:

That all of the affidavits heretofore used by either party in the former hearing in this cause in the Federal Court before the three Judges on the 29th day of September, 1930, may be filed, used and considered herein for the hearing to be had upon January 2, 1931.

That without affidavits attached for further identification either party may offer in evidence such records as the attorneys on either side desire from the office of Otto Bradford, Umpire for the Oklahoma City, Oklahoma, oil field or pool, or such certified copies therefrom as may be certified by the said Otto Bradford as such umpire.

It is further stipulated that a certified copy of any records from the office of the Corporation Commission may [fol. 144] be used and offered in evidence by either party without further identification or authentication.

It is further agreed that the orders of the Corporation Commission attached to and made a part of plaintiff's Second Amended and Supplemental Bill of Complaint are true and correct copies of the orders of said Corporation Commission and will be accepted as such and considered in evidence through said pleadings without further offer being made of the originals and it is further agreed that the orders of the Corporation Commission since the filing of said Second Amended and Supplemental Bill and up to the date of hearing on January 2, 1931, may be attached to and made a part of the amended and supplemental bill of complaint of plaintiff's without prejudice to the hearing on said 2nd day of January, 1931, and such orders may be included in the consideration of the court on said date.

It is further stipulated that the defendant, Corporation Commission, will on the day of hearing said cause on the 2nd day of January, 1931, present for examination by the plaintiff in open court, if plaintiff desires and the court so permits, the Umpires Ray Collins and Otto Bradford, and

that it will be unnecessary for plaintiff to procure the affidavits of said umpires or to subpœna them.

Dated this the 27th day of December, 1930.

Horace G. McKeever, Attorney for Plaintiff. Wm. L. Murphy, Attorney for Defendants.

[File endorsement omitted.]

[fol. 145] IN UNITED STATES DISTRICT COURT

OPINION ON APPLICATION FOR TEMPORARY INJUNCTION—Filed Feb. 9, 1931

Before Cotteral, Circuit Judge, and Williams and Kennamer, District Judges

COTTERAL, Circuit Judge, delivered the opinion of the court.

On January second and third, the applications of the plaintiffs for temporary injunctions were submitted upon the evidence of the parties and the arguments of counsel. The Champlin Refining Company renewed a former application, which was denied on September 30, 1930 after a two-days' hearing ending that day. The injunctions are sought against the enforcement by the Corporation Commission of Oklahoma, its members and the Attorney General, of certain proration orders of the Commission, curtailing the production of oil in the state for limited periods. Three of the orders, No. 5189, 5292 and 5337 had expired prior to the hearing in January. By supplemental pleadings the orders in force were assailed on like grounds, as previously alleged. Order No. 5369, which was dated October 28, 1930, restricting production to percentages or barrels by classes embracing the several fields and new pools was by its terms to be in force until January first. But by order of December 30, 1930, order No. 5413 was issued, extending No. 5369 to March 31, 1931, except as modified by that order and order No. 5396, of December 4, 1930, and by order No. 5414, of December 30, 1930. These last three orders are corrective and supplemental in character. Order No. 5369 as modified now furnishes the present ground of controversy in these cases.

[fol. 146] There are non-essential details in this scheme of proration. Both the Act of the legislature which authorized it, codified as sections 7954 to 7963, C. O. S. 1921, and the orders promulgated by the Commission are assailed. Most of the questions involved were decided at the former hearing of the Champlin case. After considering the additional complaints, evidence and arguments of counsel, the views of a majority of this court remain unchanged, and they are that the applications for the injunctions should be denied, both because the Act in its restraint of actual waste and the orders made pursuant to it are deemed to constitute a valid exercise of the police power of the state and not to violate the due process or equal protection clauses of the Fourteenth Amendment to the Federal Constitution. It is conceded, however, that section 7955 is invalid. The orders may rest on the other sections of the statute.

The proration applies to each of the plaintiffs. Three of them have pipe line facilities for taking the oil to refineries they own or control and to market, without waste, and they make a special contention against curtailment of production by them. But it is not well taken. As this court ruled at the former hearing of the Champlin case:

"The plaintiff claims as a serious ground of complaint that as it can produce oil from its wells without waste and has market for its product, the statutes and orders are discriminatory and void. The cases just cited are an answer. If the proration of oil output is within the police power of the state, loss of private property interests may not be taken into account and afford no reason for striking down a law enacted for that purpose. Such loss must yield for the common good of the public sought to be advanced in the exercise of the police power of the state."

Complaint is made that the orders constitute a price fixing scheme and effect a taking of property without due process of law. If the charge were true, the orders would fail for that reason. Williams v. Standard Oil Company, [fol. 147] 278 U. S. 235. But it is not sustained. The Commission aptly refutes such purpose and points out the decline in the price of oil since the proration has been in force.

The orders are said to be invalid, because of the varying rates of curtailment in the several fields. But the market demand and pipe line facilities differ and justify the orders in that regard. There is no arbitrary or unreasonable discrimination, because the classification is founded on different conditions. Frost v. Corporation Commission, 278 U. S. 515. Any state of facts reasonably conceivable to sustain a classification must be assumed. Lindsley v. Carbonic Gas Co., 220 U. S. 61.

The orders are also challenged because they provide for an unfair method of gauging production and entrust enforcement to an umpire and operators' committee selected from the major oil companies and paid by them; and specific objection is made on the ground that favoritism has actually occurred. But doubtless the Commission will hear all complaints and correct any untair dealing among the oil companies. At least we regard matters of procedure in the fields as within the administrative control of the Commission, and as not invalidating the scheme of proration.

At the last hearing, the question arose whether there was evidence before the Commission to sustain its finding of actual waste to accrue as the result of lifting proration, and counsel were indulged to submit citations to that evidence. We have examined them, and find they abundantly and substantially sustain the finding, and it is not here subject to review, under the uniform rule that facts found from conflicting evidence by a tribunal empowered (as the Commission is by section 7959, C. O. S. 1921) to take evidence and make findings therefrom are binding upon the courts. [fol. 148] Park Falls Lumber Co. v. Burlingame, 1 Fed. (2d) 855.

With regard to the Act, its valid provisions stand, regardless of those which may not be so, and proration is supported by the former. We repeat what this court said in deciding the Champlin case:

"The entire state policy of proration of oil output is at stake. With the wisdom of it, this court has no concern. Our inquiry is only whether the statutes and the orders are constitutionally valid.

"The last section of the statute provides that if any part, clause or sentence is invalid the rest is not to be af-

fected. With this reservation added the rule is that any valid portion of the enactment must be sustained. Williams v. Standard Oil Co., 278 U. S. 235.

"It has been authoritatively decided that it is competent state legislation to prevent waste of gas or oil, both to protect producers from a common pool and to conserve the resources of the state. It is a valid exercise of the police power. Ohio Oil Co. v. Indiana, 177 U. S. 190; Lindsley v. Natural Carbonic Gas Co., 220 U. S. 61; Walls v. Midland Carbon Co., 254 U. S. 300. The statutes must therefore be sustained in prohibiting waste of oil. * * *

"The proration contained in the orders of the Commission recites that a purpose is to prevent waste, as defined by the statute. There are findings that it would occur in different ways; for example, absence of market or transportation facilities, requiring the oil to go into earthen storage, and increase prior storage, which spell deterioration and loss. * * * The proration orders are in general valid because of a sufficient fact to sustain them, to-wit, the prevention of waste."

We cannot agree that as insisted the Act fails for uncertainty. The indefinite provisions may be disregarded. The Supreme Court of the state has construed the Act in a manner that renders it valid. Julian O. & R. Co. v. Capshaw, 292 Pac. 841. In such case, doubts should be resolved in favor of the state. Toombs v. Citizens' Bank, 281 U. S. 643.

The plaintiffs have had due opportunity to be heard before the Corporation Commission. And from the foregoing views of the controversy, we conclude they have not estab- [fol. 149] lished that this proration is an unwarranted exercise of the police power of the state and effects a taking of their property without due process of law or denies them the equal protection of the laws.

There remains one other contention worthy of notice and that is whether the proration is unconstitutional and invalid because it regulates or is a burden on interstate commerce.

It appears that a large portion of the potential oil in the state would, if limited production were allowed, be shipped out of the state, and go into the channels of interstate commerce. But the interference therewith is too remote. The

plaintiffs, as lessees, have a right to explore for and obtain oil from the leaseholds, and it is a valuable property right. Yet they obtain no title to the oil until it is reduced to possession. Ohio Oil Co. v. Indiana, 177 U. S. 190; Rich v. Donaghey, 71 Okla. 204; Alexander v. King, — Fed. (2d) —, (10 C. C. A.) decided Jan. 2, 1931. It is certainly a far-fetched view that proration affects commerce in a commodity to which the parties have not yet acquired title. The production of oil may be likened in a measure to the manufacture of goods, or the mining of coal, which is not commerce, although they are intended to be and are afterwards shipped in interstate commerce. Hammer v. Dagenhart, 247 U. S. 251, at p. 272; Delaware L. R. Co., v. Yurkonis, 238 U. S. 439.

Cases are cited which deal with statutes directly or indirectly restraining interstate commerce in commodities. The Oklahoma Law contains no such restraint but is aimed at conservation against waste of potential oil. It is sufficient to refer again to the cases heretofore cited to sustain such legislation. But even in those cases where statutes were held invalid as hampering interstate commerce, the decisions apply only after ownership of the commodity [fol. 150] arises. For example, in Oklahoma v. Kansas Nat. Gas Co., 221 U. S. 229, the court observed that "gas, when reduced to possession, is a commodity; it belongs to the owner of land, and when reduced to possession is his individual property, subject to sale by him and may be a subject of intrastate commerce and interstate commerce." And in Penna. v. West Virginia, 262 U. S. 553, at p. 586, it is said: "When a surface owner thus reduces it (gas) to possession he becomes its owner and it becomes a subject of commerce, like any product of the forest, field or mine." A case furnishing a close analogy is Foster-Fountain Packing Co., v. Haydel, 278 U. S. 1, which involved a state law prohibiting the taking of shrimp for transportation and sale in interstate commerce, and it was ruled: "As to such shrimp, the protection of the commerce clause attaches at the time of taking." The settled doctrine that the buying and selling of goods for shipment beyond a state is interstate commerce does not apply to proration of oil production under state law.

The several applications for temporary injunctions are denied.

[fol. 151] IN UNITED STATES DISTRICT COURT

DISSENTING OPINION

Before John H. Cotteral, Circuit Judge; R. L. Williams and Franklin E. Kennamer, District Judges, Sitting at Oklahoma City, Oklahoma

KENNAMER, District Judge (dissenting):

The object of this action is to restrain the enforcement of certain orders of the Corporation Commission of Oklahoma City, restricting the amount of oil complainant may produce from its oil producing properties within Oklahoma, designated as proration orders. The orders complained of were made under the authority of provisions of the statutes of Oklahoma, and will be set out herein. The statute upon which the proration orders are bottemed is herein attacked as unconstitutional, and several grounds are urged in support of the attack. It is also insisted that the manner of the enforcement of the statute renders the proration orders invalid as in contravention of the federal constitution. Evidence was presented in support of the allegations of the bill of complaint, and the following is a brief statement of the bill of complaint, as well as a reference to some of the decided cases of interest in the consideration of the case, and my conclusions. The case was most ably presented, exhaustive briefs have been submitted, but the propositions involved render it unnecessary to treat each of the numerous principles urged for a determination of the case.

The material allegations of the bill of complaint are that the Champlin Refining Company is a corporation organized and existing under and by virtue of the laws of the State of New Mexico, and is a citizen of that state; that it has been duly authorized to transact business within the State of Oklahoma, with its principal office and business located in the City of Enid, Oklahoma. It is engaged in the business of producing, refining, transporting and marketing petroleum, natural gas and their products. It owns and operates an oil refinery at Enid, Oklahoma, with a daily capacity of approximately 17,000 barrels of crude oil, which plant refines and manufactures gasoline, kerosene, lubri-
[fol. 152] cating oil, waxes, and other products. That in

connection with its refinery, it operates approximately 735 bank cars for the distribution of its refined products among its customers and trade in Oklahoma, Texas, Colorado, Kansas, Arkansas, Missouri, Minnesota, Iowa, Nebraska, South Dakota, North Dakota, Wisconsin, Michigan, Illinois, New Mexico and California, and operates approximately 470 miles of pipe line for the transportation of its products, 263 retail gasoline filling stations, and 256 wholesale stations in the various states. It is further alleged that it operates approximately 45 producing oil and gas leases, and has 400 undeveloped leases in the States of Oklahoma, Kansas, New Mexico and Texas, all representing an investment of several million dollars. The bill sets out specifically certain tracts of land on which the complainant has producing wells in what is known as the Oklahoma City oil field, describing said tracts as "A", "B", "C" and "D"; that it has a producing well on tract "A" which it has equipped at an expenditure of approximately $135,000.00; one on tract "B" at an expenditure of approximately $135,000.00; three wells on tract "C" at a cost, including the cost of the lease, at approximately $444,265.00, and six wells on tract "D" in which it owned a half interest, at a cost of approximately $125,000.00. That on or about June 30, 1930, the Corporation Commission of the State of Oklahoma, entered an order entitled "Order No. 5189, Cause No. 10,146", which prescribed the allowable production from each of the principal oil producing fields of the State of Oklahoma, which included the complainant's properties, and prescribed rules and regulations governing the production of oil from said field, and from time to time up to and including October 28, 1930, have amended and supplemented said order so as to prorate the amount of production that may be produced from the various properties of the complainant based upon an estimated potential production of the various oil fields of the State of Oklahoma, and that the said orders purport to allow 550,000 barrels of crude oil to be produced daily from the oil fields of the State of Oklahoma and recites in support thereof [fol. 153] that said figures represent the reasonable market demand for crude oil from said state; that the defendants have appointed and designated as their agents to enforce the orders, Otto B. Bradford, commonly known as an "umpire" for the Oklahoma City, Oklahoma, oil field, and

Ray M. Collins, commonly known as an "umpire" for the Greater Seminole oil field, and other fields within the State of Oklahoma; that the agents appointed by said Commission to enforce the orders are employees and agents of certain oil companies, and commonly known and designated as an "Operators' Committee" and competitors of the complainant; that many of the oil fields of Oklahoma are not prorated, but the respective owners of said wells in such fields are permitted to run their wells at full capacity; that the defendants are threatening to enforce said orders and to subject complainant to heavy penalties and fines for a violation of the orders. The bill attacks the authority of the Commission to make and enforce such orders, which is provided for in Sections 7954 to 7963 inclusive, Oklahoma Compiled Statutes, 1921, as being void for the reason that the sections of the statute under which the Commission has acted violates the Fourteenth Amendment to the Constitution of the United States, and further, that if the Act of the Legislature of February 11, 1915, known as the Conservation Act is constitutional, that the orders of the Commission are unconstitutional, because the Commission has so far exceeded its delegated powers as to render its rules, regulations, and proration orders violative of the Fourteenth Amendment to the federal constitution.

Upon a previous hearing of the application for a temporary injunction in this case, it was determined that it was the duty of complainant to apply to the Corporation Commission for a modification of the orders so as to permit complainant to operate its own wells without actual waste, before coming to this court for equitable relief, and the injunction was denied as no showing had been made that complainant's legal remedy was not adequate.

[fol. 154] It has been established by a supplemental bill and by evidence that the complainant made such an application to the Corporation Commission, but the relief sought was denied by the Commission.

Evidence introduced before the Commission upon the hearing of the application to modify the orders, which was not controverted, showed that complainant is in a position to produce oil from its properties in the Oklahoma City field, and other Oklahoma fields, without any actual waste; that its wells are equipped with modern equipment; that it has transportation facilities and a refinery for the proper

refining and marketing of its products, and the placing of the same upon the markets without actual waste. The orders of the Commission as entered and construed by it, and the agents charged with the duty of enforcing them, assert the right to restrict complainant in the amount of oil it may produce from its wells. They term the purpose for such restriction is to prevent an "inequitable or unfair taking, from a common source of supply, of such crude oil, and to prevent an unreasonable discrimination in favor of any one taking from the common source of supply as against another, and to prevent waste as defined in the Act of February 11, 1915."

The first question to determine is the constitutionality of the Act under which the Corporation Commission of Oklahoma derives its authority to enter the orders challenged by complainant. If the Act is violative of the federal constitution, it is invalid, and the orders entered by virtue of it will likewise be invalid, and complainant will be entitled to have their enforcement enjoined.

It is urged that the Act violated the Fourteenth Amendment to the United States Constitution, and that the orders as promulgated and enforced, which reflect the construction of the Conservation Act by the state authorities charged with the duty of enforcing it, violates Section 8 of Article 1, of the National Constitution, as an unwarranted interference with interstate commerce.

[fol. 155] The Act is entitled: "An act defining and prohibiting the waste of crude oil or petroleum, providing for the equitable taking of the same from the ground and conferring authority on the Corporation Commission, prescribing the penalty for the violation of this act, and declaring an emergency." Section 1 to section 10 of the Act, inclusive, are as follows:

"Section 1. That the production of crude oil or petroleum in the State of Oklahoma, in such manner and under such conditions as to constitute waste, is hereby prohibited.

"Section 2. That the taking of crude oil or petroleum from any oil-bearing sand or sands in the State of Oklahoma at a time when there is not a market demand therefor at the well at a price equivalent to the actual value of such crude oil or petroleum is hereby prohibited, and the

actual value of such crude oil or petroleum at any time shall be the average value as near as may be ascertained in the United States at retail of the by-products of such crude oil or petroleum when refined less the cost and a reasonable profit in the business of transporting, refining and marketing the same, and the Corporation Commission of this State is hereby invested with the authority and power to investigate and determine from time to time the actual value of such crude oil or petroleum by the standard herein provided, and when so determined, said Commission shall promulgate its findings by its orders duly made and recorded, and publish the same in some newspaper of general circulation in the State.

"Section 3. That the term "wastw" as used herein, in addition to its ordinary meaning, shall include economic waste, underground waste, surface waste and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands. The Corporation Commission shall have authority to make rules and regulations for the prevention of such wastes, and for the protection of all fresh water strata, and oil and gas bearing strata, encountered in any well drilled for oil.

"Section 4. That whenever the full production from any common source of supply of crude oil or petroleum in this State can only be obtained under conditions constituting waste, as herein defined, then any person, firm or corporation, having the right to drill into and produce oil from any such common source of supply may take therefrom only such proportion of all crude oil and petroleum that may be produced therefrom, without waste, as the production of the well or wells of any such person, firm or corporation, bears to the total production of such common source of supply. The Corporation Commission is authorized to so regulate the taking of crude oil or petroleum from any or all such common sources of supply within the state of Oklahoma, as to prevent the inequitable or unfair taking, from a common source of supply, of such crude oil or petroleum, by any person, firm or corporation, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another.

"Section 5. That for the purpose of determining such production, a guage of each well shall be taken under rules and regulations to be prescribed by the Corporation Commission, and said Commission is authorized and directed to make and promulgate, by proper order, such other rules and regulations, and to employ or appoint such agents with the consent of the Governor, as may be necessary to enforce this Act.

[fol. 156] "Section 6. That any person, firm or corporation, or the Attorney General on behalf of the State, may institute proceedings before the Corporation Commission, or apply for a hearing before said Commission, upon any question relating to the enforcement of this Act, and jurisdiction is hereby conferred upon said Commission to hear and determine the same. Said commission shall set a time and place, when and where such hearing shall be had and give reasonable notice thereof to all persons or classes interested therein, by publication in some newspaper or newspapers, having general circulation in the State, and in addition thereto, shall cause reasonable notice in writing to be served personally on any person, firm or corporation complain-d against. In the exercise and enforcement of such jurisdiction, said Commission is authorized to determine any question of fact arising hereunder, and to summon witnesses, make ancillary orders, and use mesne and final process, including inspection and punishment as for contempt, analogous to proceedings under its control over public service corporations, as now provided by law.

"Section 7. That appellate jurisdiction is hereby conferred upon the Supreme Court in this State to review the action of said Commission in making any order, or orders, under this act. Such appeal may be taken by any person, firm or corporation shown by the record to be interested therein, in the same manner and time as appeals are allowed by law from other orders of the Corporation Commission. Said orders so appealed from shall not be superseded by the mere fact of such appeal being taken, but shall be and remain in full force and effect until legally suspended or set aside by the Supreme Court.

"Section 8. That in addition to any penalty that may be imposed by the Corporation Commission for contempt, any person, firm or corporation, or any officer, agent or

employee thereof, directly or indirectly violating the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof, in a court of competent jurisdiction, shall be punished by a fine in any sum not to exceed five thousand dollars ($5,000.00), or by imprisonment in the county jail not to exceed thirty (30) days, or by both fine and imprisonment.

"Section 9. That in addition to any penalty imposed under the preceding section, any person, firm or corporation, violating the provisions of this act, shall be subject to have his or its producing property placed in the hands of a receiver by a court of competent jurisdiction, at the suit of the state through the Attorney General or any county attorney, but such receivership shall only extend to the operating of producing wells and the marketing of the production thereof, under the provisions of this act.

"Section 10. That the invalidity of any section, subdivision, clause or sentence of this act shall not in any manner affect the validity of the remaining portion thereof."

[fol. 157] An attack was made upon this act in the state court of Oklahoma, and its constitutionality was sustained by the Supreme Court of Oklahoma. Julian Oil & Royalties Co. v. Capshaw, et al., 292 Pac. 841. However, the federal court will decide whether the act violates the fourteenth amendment to the Constitution of the United States independently, and is not bound to follow a decision of the state court, as it is not a case of the federal court administering the state law, but is called upon to test the validity of it. Piqua Branch of the State Bank of Ohio v. Knoop, 16 How. 370, 14 L. Ed. 977; Connally v. General Construction Co., 269 U. S. 385, 70 L. Ed. 322.

It is conceded that section 2 of the act is invalid, as it is a price fixing statute. Clearly, the sole purpose of section 2 of the act, is to fix the price for crude oil or petroleum and for that reason is void. See Tyson & Bro. v. Banton, 273 U. S. 418, 71 L. Ed. 718; Williams v. Standard Oil Co., 278 U. S. 235, 73 L. Ed. 287.

It is to be noted that the act under consideration is penal, and provides that a violation of the act shall constitute a misdemeanor, providing both fine and imprisonment for a conviction. An attempt to define 'waste' is the subject of

the third section of the act. The ordinary meaning of the word is not difficult, and it is a term which is generally easy of application. In the act, an attempt is made to enlarge the term 'waste' and it is provided that the term shall include various "wastes" which seem incapable of definition, and certainly are vague and indefinite in both their meaning and application. Economics is regarded as a political science, but unlike a true science, it is indefinite and un- [fol. 158] certain. Science is knowledge of facts or principles; it is a reduction to a more or less certainty of facts or principles. An attempt has been made by economists to establish facts and principles in economic matters, and hence, it is regarded as a form of science. However, there are numerous theories upon the various economic subjects, and wide differences of opinions, as well as definitions, of economic subjects, among the economists. "Economic waste" has no definite meaning, even to economists, and certainly is the subject of uncertainty among those untrained in economics. "Waste incident to the production of crude oil or petroleum, etc." is uncertain. 'Reasonable market demands' as used in the act, sets no standard, but leaves the determination of this part of the act solely to the Corporation Commission, but at the same time subjects the producer of crude oil to a fine or imprisonment if he commits 'waste', which he cannot determine by any fixed standards. Section 4 is bottomed upon the commission of 'waste' as therein defined, and the uncertainty and indefiniteness of the term renders the entire section vague and indefinite. Aside from the term 'waste' as used therein, the entire section is indefinite. The sections of the act herein referred to are so vague and uncertain in their description as to what shall constitute a misdemeanor, punishable by fine or imprisonment, that they are invalid under the Fourteenth Amendment to the federal constitution. In the case of Connally v. General Construction Co., 269 U. S. 385, the court said: "Any statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning, and differ as to its application, violates the first essential of due process of law." See International Harvester Co. v. Kentucky, 234 U. S. 216; United States v. Cohen Grocery Co., 255 U. S. 81; Cline v. Frink Dairy Co., 274 U. S. 445. It

is apparent that the act attempted to authorize the Corporation Commission to determine the sufficiency of marketing facilities, or the reasonableness of market demand, both of which are uncertain.

[fol. 159] The evidence in the instant case established that the complainant has a market for its oil, has the facilities to transport it to its refinery, and has sufficient filling stations to market the refined product. However, under the orders of the Corporation Commission, it is not permitted to produce sufficient oil for its refinery's requirements, or for its marketing requirements. It was suggested at the hearing by those defending the constitutionality of the act and the proration orders made thereunder, that if complainant needed more crude oil for its refinery than it was permitted to run from its wells under the proration orders, that it could buy the oil at the posted price. Such a procedure would not eliminate waste; neither would it conserve crude oil. Its effect is merely to burden complainant, by compelling it to purchase crude oil at a price fixed by the Corporation Commission, while it has an abundance of crude oil which it is desirous to sell, at least after refining. Price fixing seems to be the object to be accomplished, rather than conservation, in view of the evidence in the instant case.

A consideration of the act in its entirely shows that the Commission was to have been vested with authority to determine the conditions under which crude oil might be produced and marketed. Under the pretense of preventing 'waste' as it is ordinarily used, and as used in the act, the Commission is vested with power to fix prices for crude oil or petroleum. In fact, that appears to be the sole purpose for the act. As the production of crude oil or petroleum is not affected directly with a public interest, the act must fail as violative of the Fourteenth Amendment to the federal constitution, as a price fixing statute.

As stated above, the producer of crude oil is subjected to the penalties of a misdemeanor for producing oil in such manner and under such conditions as to constitute waste, and the 'waste' referred to is so vague and uncertain, both as to its meaning, and as to its application, that the act is unconstitutional as violative of the Fourteenth Amendment, as a denial of due process of law.

[fol. 160] The state, acting under its general police powers, undoubtedly has the right to conserve natural resources within its territorial limits, although such resources are privately owned, and are beneath the surface of the land. This principle is well founded, for the reason that natural resources should be protected for the common good, and that the correlative rights of adjoining owners may be protected. However, a conservation of natural resources should involve the interests of the consuming public, and should be applied for the common good or weal. A limited supply of a natural resource demands a stricter conservation, even to the extent of increasing the price of the object if it be an incident to the conservation, and is not the primary purpose of the legislation. Where there is an abundance of a resource, such as crude oil, a conservation plan should be adopted which prevents and eliminates actual waste, but which should afford production at minimum costs, upon a competitive basis, so that the consuming public may have the advantage of reduced costs of the products. The public and common good demands that artificial means should not be employed, either directly or under the guise of a conservation measure, to increase the costs of the products. This principle is the basis upon which price-fixing statutes and acts are stricken down as invalid. The natural laws of supply and demand should regulate and fix the cost and price of crude oil, as it determines the price and cost of other articles, and unless crude oil is so directly affected with a public interest as a natural resource, necessarily to be carefully conserved by increasing the cost and price, that feature of it should not be the subject of legislation. We must take judicial notice of the over-production of crude oil, to say nothing of the evidence presented establishing the vastness of the over-production, and also of the common-ess of the use of the refined products, and the police power of the state should be exercised for the promotion of the common good in the use of the product as well as in its conservation. Nothing herein stated should be regarded as detracting from legislation which prevents actual waste of [fol. 161] crude oil, or any other natural resource. We are not able to find a similar statute in any other state to the one under consideration, and no precedent as to the manner of enforcement has been passed upon as a decided case.

In the case of Ohio Oil Co. v. Indiana, 177 U. S. 190, an

Indiana statute prohibiting the owner of an oil or gas well from permitting the escape of oil or gas into the air for more than two days, was sustained. Such an act not only promoted the common weal, but also protected the correlative rights of adjacent owners by preventing an exhaustion of the common supply by waste into the air. The statute also provided that the open flowing of a gas or oil well would endanger life and would be injurious to persons and property.

Midland Carbon Co. v. Wyoming, 254 U. S. 300, involved an act of the state of Wyoming for the conservation of natural gas from actual waste. Quinton Relief Oil & Gas Co. v. Corporation Commission, 101 Okla. 164, is cited, but in that case, the statute was sustained as purely a conservation act against actual waste. These cases differ widely from the questions presented in this case, and actual waste is not involved.

The right of an owner of land within Oklahoma to drill wells and reduce oil and gas to possession which lies beneath his land is a vested right protected by the Fourteenth Amendment to the Federal Constitution. The Oklahoma Supreme Court has repeatedly followed the rule that an estate in fee simple in lands in Oklahoma includes all oil and gas in place in and under the land so long as it rema-ns therein, and the owner of such land has a vested right to reduce to possession the oil and gas under his land, and to appropriate it to his own use. Wright v. Carter Oil Co. 97 Okla. 46; Rich v. Donaghey, 71 Okla. 204, 39 A. L. R. 356. The right to own property necessarily implies the right to use it and to enjoy the profits accruing therefrom, since without the latter the former cannot be of value. Green v. [fol. 162] Biddle, 8 Wheat. 1-76, 5 L. Ed. 566; Terrace v. Thompson, 263 U. S. 215, 68 L. Ed. 274.

In the case of Wright v. Carter Oil Co., supra, the Oklahoma Supreme Court said: "The right to reduce oil and gas to possession is a valuable property right." In the same case, the court held that "oil and gas belong to the owner of the land and are a part of it so long as they are on it or in it and subject to his control, but when they escape and go into other lands, or come under another's control through the natural reservoir, the title of the former owner is gone." Thus, an established rule of property has grown

around oil and gas, and such property rights are subject to protection as other property rights.

In Ohio Oil Co. v. Indiana, supra, the Court said: "On the other hand as to the gas and oil, the surface proprietors within the gas field all have the right to reduce to possession the gas and oil beneath. They could not be absolutely deprived of this right which belongs to them without a taking of private property". In West v. Kansas Natural Gas Co. 221 U. S. 229, the court in referring to the opinion of the Court in Ohio Oil Co. v. Indiana, said: "It surely cannot need argument to show that if they could not be deprived of the right to reduce the gas to possession they could not be deprived of any right attached to it when in possession." The trial court in the cited case, in construing an act of the legislature of Oklahoma prohibiting the transportation of natural gas in interstate commerce, held (172 Fed. 545) that natural gas found within the territorial limits of a state was not a product which the state may conserve and preserve by a law as a thing in which the people of the state have a common interest, as wild animals, but that it was an absolute property right, of which he could not be deprived without just compensation.

While the state, in the exercise of its police power, has the power, through appropriate legislation, to protect the public morals, health and safety, it cannot take private prop-
[fol. 163] erty from one person and transfer it to another for the private use and benefit of such person. The exercise of the police power is subject to constitutional limitations. "The chief restriction on this class of legislation is that vested rights must not be disturbed" Cooley's Constitutional Limitations, page 744.

In Lawton v. Steele, 152 U. S. 133, 38 L. Ed. 385, the Court said:

"To justify the state in thus interposing its authority in behalf of the public, it must appear first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. The legislature may not, under the guise of protecting the public interest, arbitrarily interfere with private business, or impose unusual and unnecessary re-

strictions upon lawful occupations. In other words, its determination as to what is a proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the courts."

The evidence in the instant case establishes that the proration orders are enforced to protect the price of crude oil, rather than to prevent natural waste or to conserve petroleum, and thus are not in the interest of the public generally. It is obvious that the act complained of is not a reasonable use of the police power of the state, but is an interference with privately owned property rights. See Connoly v. Union Sewer Pipe Co., 184 U. S. 540; Adams v. Tanner, 244 U. S. 590; Traux v. Corrigan, 257 U. S. 312; Terrace v. Thompson, 263 U. S. 197, and Pennsylvania Coal Co. v. Mahon, 260 U. S. 393.

It is urged that the act complained of, together with the proration orders made under its authority, are invalid as an interference with interstate commerce. The Commission, in its findings of fact, found that the potential daily production in Oklahoma for October, 1930, was 3,638,478 barrels, and that it would increase during November and December, 1930; that the market demands for these months was approximately 550,000 barrels per day, [fol. 164] and that any amount in excess of the market demands should not be permitted to be produced; that the total potential production of crude oil in the United States approximates 10,000,000 barrels per day; that the domestic demands for oil in the United States is 2,800,000 barrels per day; that from 65 to 75 per cent of the crude oil produced from wells in Oklahoma and sold, is actually sold to refineries and producers who move it to points outside the State of Oklahoma. It therefore appears that from 65 to 75 per cent of the crude oil produced in Oklahoma goes into the channels of interstate commerce. The restriction in the production of crude oil under such circumstances is a direct interference with interstate commerce. The Commission also found that the importation of crude oil into the United States is approximately 300,000 barrels per day, and production is curtailed in Oklahoma to permit the continued importation, it seems.

In the case of Foster Fountain Parking Co. v. Haydel, 278 U. S. 1, 73 L. Ed. 147, the court said, "One challeng-

ing the validity of a state enactment on the ground that it is repugnant to the commerce clause is not necessarily bound by the legislative declarations of purpose. It is open to him to show that in their practical operation its provisions directly burden or destroy interstate commerce. In determining what is interstate commerce, courts look to practical considerations and the established course of business. Interstate commerce includes more than transportation; it embraces all the component parts of commercial intercourse among states. And a state statute that operates directly to burden any of its essential elements is invalid. A state is without power to prevent privately owned articles of trade from being shipped and sold in interstate commerce on the ground that they are required to satisfy local demands or because they are needed by the people of the state.'' See Swift v. United States, 196 U. S. 375; Lemke v. Farmers Grain Co., 258 U. S. 60; United Mine Workers of America v. Coronado Coal Co., 268 U. S. 295.

[fol. 165] The business of exploring for oil or gas does not itself constitute interstate commerce, but the business of reducing oil and gas to possession, as shown in the instant case, and an indispensible part of the course of business of refining crude oil and the placing of it, or its products in the commerce of the world. The regulations complained of will, and do, directly affect the market of such products, which prevent the shipping of the oil in interstate commerce.

In the case of United Mine Workers of America v. Coronado Coal Co. supra, Chief Justice Taft, said:

''The more reduction in the supply of an article to be shipped in interstate commerce by the illegal or tortious prevention of its manufacture or production is ordinarily an indirect and remote obstruction to that commerce. But when the intent of those unlawfully preventing the manufacture or production is shown to be to restrain or control the supply entering and moving in interstate commerce, or the price of it in interstate markets, their action is a direct violation of the Anti-trust Act.''

The evidence clearly shows that the orders of the Commission are intended to restrict the volume of oil that may go into the channels of interstate commerce from the oil

fields of Oklahoma. The findings of the Commission as to the daily potential production of crude oil within the State of Oklahoma shows that Oklahoma is one of the major oil producing states of the Union. In the light of the decided cases I am clearly of the opinion that the effect of the orders of the Corporation Commission is a direct interference with interstate commerce. My conclusions are that the Act of the Legislature assailed in this action is unconstitutional because of its uncertainty, because it is a price fixing statute, and because it is a direct interference with interstate commerce; that the orders of the Commission complained of constitute an abuse of the police power of the state, and is not a proper exercise of such power in the interest of the common good. I therefore dissent from the conclusions reached by the majority of the Court.

[File endorsement omitted.]

[fol. 166] In United States District Court

Finding of Facts—Filed Feb. 9, 1931

At the temporary injunction hearing in this case on January 2 and 3, 1931, the essential and controlling question of fact was whether the Corporation Commission had substantial evidence before it showing that actual waste of oil would accrue from the lifting of proration, ordered by the Commission against the plaintiff. We find that such evidence was introduced before said Commission and considered by it in ordering proration, and further find that such waste would accrue and this court accepts the finding of the Corporation Commission as conclusive on that subject.

February 9, 1931.

John H. Cotteral, Circuit Judge. R. L. Williams, District Judge.

I dissent to the findings of fact by the majority of the court for the reason the complainants make no objection to any order that the Corporation Commission may make enjoining actual waste.

F. E. Kennamer, District Judge.

[File endorsement omitted.]

[fol. 167] IN UNITED STATES DISTRICT COURT

Equity. No. 1156

CHAMPLIN REFINING COMPANY

v.

CORPORATION COMMISSION et al.

ORDER ON APPLICATION FOR TEMPORARY INJUNCTION—Filed Feb. 9, 1931

On this day the application of the plaintiff for a temporary injunction in said cause, presented in the amended and supplemental bill herein against the enforcement by the defendants of oil proration orders of the Corporation Commission of the state of Oklahoma, and duly submitted upon the evidence of the parties and the arguments of counsel, January 2 and 3, 1931, comes on for determination, and after due consideration of the same, it is by the court

Ordered, that said application be denied. To this order, the plaintiff at the time duly excepts.

Guthrie, Oklahoma, February 9, 1931.

John H. Cotteral, Circuit Judge. R. L. Williams, District Judge. —— ——, District Judge.

I dissent to the findings of fact by the majority of the court for the reason the complainants make no objection to any order that the Corporation Commission may make enjoining actual waste.

F. E. Kennamer, District Judge.

[File endorsement omitted.]

[fol. 168] IN UNITED STATES DISTRICT COURT

ORDER ADOPTING OPINIONS AS CONCLUSIONS OF LAW—Filed April 11, 1931

It is ordered that the respective opinions handed down herein and filed by each of the Judges shall be and hereby are considered and adopted as the conclusions of law of each of

said judges sitting in said cause upon the trial for the application of a temporary injunction, said opinions being the conclusions of law of said Judges in compliance with Equity Rule 70½.

Made and entered as of date 9 day of February, 1931.

John H. Cotteral, Circuit Judge. R. L. Williams, U. S. Dist. Judge. F. E. Kennamer.

[File endorsement omitted.]

[fol. 169] IN UNITED STATES DISTRICT COURT

[Title omitted]

APPLICATION FOR AN ORDER PERMITTING THE ABOVE ENTITLED CAUSE TO BE CONTINUED AND MAINTAINED AGAINST PAUL WALKER AS SUCCESSOR IN OFFICE AS A MEMBER OF THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA TO THE DEFENDANT FRED C. CAPSHAW SUBSTITUTING THE SAID PAUL WALKER AS A PARTY DEFENDANT IN LIEU OF FRED C. CAPSHAW AND DISMISSING THE SAID ABOVE ENTITLED CAUSE AS TO THE SAID FRED C. CAPSHAW—Filed Mar. 31, 1931

Comes now the Champlin Refining Company and respectfully shows to the Court that at the time of the filing of the second amended and supplemental bill of complaint Fred C. Capshaw was a duly elected, qualified and acting member of the Corporation Commission of the State of Oklahoma; that his term of office as such member expired on the 10th day of January, 1931; that Paul Walker having been duly elected as a member of said Corporation Commission qualified as a member thereof on the 10th day of January, 1931 and is now a duly elected, qualified and acting member of the Corporation Commission of the State of Oklahoma;

That the said Paul Walker and the defendants E. R. Hughes and C. C. Childers now constitute the Corporation Commission of the State of Oklahoma, and that the said Paul Walker in conjunction with the said E. R. Hughes and C. C. Childers are continuing and are threatening to continue to make and enforce from time to time rules and

regulations and orders complained of in the plaintiff's second amended and supplemental bill of complaint.

[fol. 170] Wherefore the plaintiff respectfully prays the order of this Court permitting the above entitled cause to be continued and maintained by it against Paul Walker as a successor in the office of a member of the Corporation Commission of the State of Oklahoma and against the defendants E. R. Hughes and C. C. Childers as such member of the Corporation Commission of the State of Oklahoma substituting the said Paul Walker as a party defendant in lieu of the defendant Fred C. Capshaw and dismissing the cause as against the said Fred C. Capshaw.

Horace G. McKeever, George S. Ramsey, Harry O. Glasser, Edgar A. de Meules, Geo. S. Ramsey, Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 171] IN UNITED STATES DISTRICT COURT

[Title omitted]

CONSENT TO ENTERING OF ORDER PERMITTING THE ABOVE-ENTITLED CAUSE TO BE CONTINUED AND MAINTAINED AGAINST PAUL WALKER, AS SUCCESSOR AS A MEMBER OF THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, TO THE DEFENDANT FRED C. CAPSHAW—Filed Mar. 31, 1931

Comes now Paul Walker and consents that the above entitled cause may be continued and maintained against him as a member of the Corporation Commission of the State of Oklahoma as successor in office to the defendant Fred C. Capshaw, and consents to the substitution of himself as a party defendant in lieu of the said Fred C. Capshaw.

Paul Walker.

[File endorsement omitted.]

[fol. 172] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER PERMITTING CAUSE TO BE CONTINUED AND MAINTAINED AGAINST PAUL WALKER AS A MEMBER OF THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA AND AS SUCCESSOR IN OFFICE TO THE DEFENDANT FRED C. CAPSHAW—Filed Mar. 31, 1931

This cause coming on to be heard on this 31st day of March, 1931, upon the application of the plaintiff for an order permitting the above entitled cause to be continued and maintained against Paul Walker as a member of the Corporation Commission as successor in office to the defendant Fred C. Capshaw and substituting said Paul Walker as a party defendant in lieu of the defendant Fred C. Capshaw, and dismissing the above entitled cause as to the defendant Fred C. Capshaw:

The Court finds that there is a substantial need for continuing and maintaining the above entitled cause and for obtaining a judicial determination of the questions involved, and said Paul Walker having filed his written consent to the entering of the order prayed for, and the Court being fully further advised in the premises,

It is hereby ordered that the above entitled cause be continued and maintained against said Paul Walker as a [fol. 173] member of the Corporation Commission of the State of Oklahoma in succession in office to the defendant Fred C. Capshaw; that the said Paul Walker be substituted as a party defendant in lieu of the said Fred C. Capshaw and that the cause be dismissed as to the defendant Fred C. Capshaw.

John H. Cotteral, Circuit Judge. R. L. Williams, U. S. District Judge. F. E. Kennamer, U. S. District Judge.

[File endorsement omitted.]

[fol. 174] IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

Equity. No. 1156

CHAMPLAIN REFINING COMPANY, a Corporation, Plaintiff,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA and Paul Walker, E. R. Hughes, and C. C. Childers, Constituting the Corporation Commission of the State of Oklahoma, and Their Successors in Office, and Fred Capshaw, E. R. Hughes, and C. C. Childers, Defendants

Statement of Evidence under Rule 75-B

The following is an agreed condensed statement, in narrative form, of all the evidence introduced at the hearing for a temporary injunction, made in pursuance of Equity Rule 75-B and lodged in the Clerk's office as provided by said rule:

AFFIDAVIT OF H. H. CHAMPLIN, INTRODUCED ON BEHALF OF THE PLAINTIFF-APPELLANT

H. H. Champlin states that he is president, general manager and controlling stockholder of the plaintiff corporation, Champlin Refining Company, and has been such since he organized said company.

That said company has been engaged in business with its principal plant at Enid, Oklahoma, since the year 1920; the company is now organized under the laws of the State of New Mexico, though formerly had a charter in the State of Maine.

The said Champlain Refining Company is engaged in the business of refining, transporting and marketing petroleum, natural gas and other products and owns and operates its refinery at Enid, Oklahoma, which has a capacity of approximately 17,000 barrels of crude oil per day, wherein it manufactures gasoline, kerosene, lubricating oils, waxes, greases and other products in connection therewith; own [fol. 175] tank cars, approximately 735 in number, and through said tank cars distributes its refined products to

its customers and to the trade in interstate commerce in Texas, Colorado, Kansas, Arkansas, Missouri, Minnesota, Iowa, Nebraska, South Dakota, North Dakota, Wisconsin, Michigan, Illinois, New Mexico and California, in addition to its distribution of such products in intrastate commerce within the State of Oklahoma.

Said company owns, operates and controls approximately 470 miles of pipe line used for the transportation of crude oil to its refinery, and owns and maintains approximately 263 retail gasoline filling stations, and approximately 256 wholesale gasoline stations, a portion of which are within the State of Oklahoma, and the others being in Kansas, Texas, Iowa, Colorado and Illinois.

That the amount of its products as transported and shipped in interstate commerce is shown by the affidavit of G. E. Leverton, the auditor of said company, which affidavit is herein filed; that its lease holdings, in addition to the producing leases shown by the affidavit of D. W. Cotton herein filed, comprises approximately 400 undeveloped oil and gas leases in the states of Oklahoma, Kansas, New Mexico and Texas, and that the entire investment of the said company in all of its various properties amounts to several million dollars; that said company is the owner of the producing oil and gas leases which are described in the affidavit of the said D. W. Cotton, and also set forth in plaintiff's Second Amended and Supplemental Bill of Complaint.

That the plaintiff has drilled and equipped two wells in the Oklahoma City field at an approximate cost of $135,000.00 each, and has produced and equipped nine wells in what is known as the Seminole area which, together with the cost of said leases, represent an investment of approximately $600,000.00.

That plaintiff's refinery located at Enid, Oklahoma, is modern in every particular and is equipped with all of the modern and up to date appliances for cracking and refining crude oil; that plaintiff has a market for all of the refined products it can manufacture and can produce crude oil from its own wells in the Oklahoma City and Seminole fields at less cost than the posted market price, which is from $1.00 to $1.07 per barrel, depending on gravity; that

plaintiff can produce crude oil from its own wells, including the initial cost, for approximately 60¢ per barrel; that the two wells in the Oklahoma City field have a daily potential production of approximately 6,000 barrels and 9,600 barrels respectively; that on account of the proration orders of which the plaintiff complains, it is unable to run its wells on the present time proration but 2.78%, the effect of which is to deny the said plaintiff a right to use its own oil and compelling it to go into the open market and purchase prorated oil from other producers in the field at a price far in excess of what it costs plaintiff to produce said oil; that plaintiff can operate its wells in the Oklahoma City field for a year, not including the initial cost, at from 10¢ to 15¢ per barrel; that plaintiff has under the proration orders but approximately 1,800 barrels per day allowable production from its own wells, including royalty oil, which amount it is unable to run every day on account of the method used by the Corporation Commission through time proration, and to run its refinery at full capacity would necessitate said plaintiff going into the open market and purchasing approximately 15,200 barrels per day; that plaintiff is not only fully equipped to produce and refine said oil without waste, physical or otherwise, but is equipped to market the [fol. 176] same and the refined products therefrom, and that under the proration orders, if compelled to purchase oil at the posted price from other producers, the plaintiff cannot operate its refinery except at a great sacrifice and loss; the plaintiff company has been engaged in refining oil and shipping the refined products and also crude oil in interstate commerce for a period of ten years; that the oil it produces from its own leases is within reach of its gathering lines, as is the Oklahoma City and Seminole fields, and has heretofore been transported to and refined in plaintiff's own refinery at Enid, Oklahoma, and for its production in the Oklahoma City field it has equipped itself fully and provided for the transportation of the oil of said field to its refinery with the intention and purpose of refining said oil in its own refinery at Enid and shipping the same, or a great portion thereof, to its customers and trade in interstate commerce where it has a market demand for the same but was stopped from so doing by the orders complained of in the pleadings herein filed as made by said Corporation Commission and by the threats of enforcement of said

orders by said commission and the imposing of the penalties provided in the 1915 so called Conservation Act set forth in plaintiff's bill of complaint; that unless prevented by the defendants' orders and a continuance thereof or renewals thereof, and rules and regulations made by the defendant Corporation Commission, plaintiff will continue to refine at its own refinery its own oil produced from its own wells, products sold and to be sold in intrastate and interstate commerce and will continue to supply its trade, both in intra and interstate commerce, through its own tank wagons, tank cars and filling stations, which stations it owns in the state of Oklahoma, Kansas, Texas, Iowa, Colorado and Illinois, and in addition thereto will ship in interstate commerce to its many customers and to the trade in the states of Arkansas, Missouri, Minnesota, Nebraska, South Dakota, North Dakota, Wisconsin, Michigan, New Mexico and California, where it has a market demand for such products.

This plaintiff suffers irreparable injury and loss every day said proration orders complained of in plaintiff's Second Amended and Supplemental Bill of Complaint are in force and effect. That not including the initial cost of the wells, it suffers a loss each day of the difference between the posted price for crude oil of $1.00 to $1.07 per barrel and the cost of producing the oil of 10¢ to 15¢ per barrel, making an approximate loss which the plaintiff now suffers each day of upwards of 90¢ per barrel, thereby if running said refinery at capacity it would reflect a loss each day on the item alone of furnishing crude oil to the refinery of upwards of $13,000.00; that plaintiff has been compelled, in order to minimize the loss and still supply its regular customers, to run its refinery at a minimum capacity and suffer a loss of approximately $3,000.00 a day, which this affiant states is directly and indirectly chargeable to said proration orders complained of.

Affiant states further that prior to the time said oppressive and unwarranted orders of the Corporation Commission were issued, conditions were such that the refinery could make a profit by going into the open market and purchasing such oil as it desired, but that under such orders it cannot now do so for the reason that the curtailment of production of crude oil by the proration method practiced by the Corporation Commission of Oklahoma has maintained

a high price level for crude oil far in excess of the value of said oil based on the available supply, and this affiant states that in effect the curtailment of crude oil production under [fol. 177] said orders complained of fixes the price of crude oil and holds said price on the high levels maintained, and that it is affiant's belief that said proration orders are made in keeping with the plan of the major importing oil companies, their subsidiary companies and those dependent upon them, by using the Corporation Commission as a shield against the prosecution for violation of the Sherman Anti-Trust Act.

This affiant further states that the oil and refined products shipped in intrastate and interstate commerce as shown by the affidavit of G. E. Leverton herein filed indicates the proportion in quantity of such shipments and the schedule hereto attached marked "Exhibit A" indicates the financial returns from the sale of said products on the market at the time of the manufacture, sale and shipment of said products.

The said plaintiff company has an investment in its refinery, tank cars and filling stations in Oklahoma and filling stations outside of Oklahoma in the amounts for each as shown by the schedule hereto attached, marked "Exhibit B", and made a part hereof.

EXHIBIT "A" TO CHAMPLIN AFFIDAVIT

Sales Value F. O. B. Enid, Oklahoma, of Refined Products Sold July 1, 1928, to November 30, 1930

	Intrastate	Interstate	Total
Last 6 months 1928	$1,442,675.01	$4,052,008.21	$5,494,683.22
12 months 1929	2,926,481.10	7,094,114.87	10,020,595.97
11 months 1930	2,101,233.68	6,456,820.28	8,558,053.96
Grand total	6,470,389.79	17,602,943.36	24,073,333.15

[fol. 178] EXHIBIT "B" TO CHAMPLIN AFFIDAVIT

Costs of Investments as of November 30, 1930

Plant:	
Refinery and Equipment	$4,263,213.38
Pipe Line	3,036,890.56
Total Plant	7,300,103.94
Tank Cars	1,286,658.43
Filling Stations and Marketing Equipment:	
Situated within Oklahoma	1,698,677.00
Situated outside of Oklahoma	1,276,981.37
Total	2,975,658.37

[fol. 179] AFFIDAVIT OF D. W. COTTON ON BEHALF OF PLAINTIFF-APPELLANT

That he resides at Enid, Oklahoma, and that he is an officer of the Champlin Refining Company, the complainant herein, and a member of the Board of Directors, and is familiar with the Company's business and is actually engaged as one of the managers of said business.

Affiant states that the complainant Company has, in what is known as the Oklahoma City, Oklahoma, oil field, two completed wells, one of which, on the test, showed a production of 4,400 barrels per day, and the other of 6,000 barrels per day, each of which are now shut in and producing no oil, awaiting the decision of the Courts.

That the said Company owns and operates a refinery at Enid, Oklahoma, of a capacity of 17,000 barrels per day crude, and has facilities for the distribution and sale of the products from said refinery, being equipped with 735 tank cars distributing its products from the refinery over the State of Oklahoma, Texas, Colorado, Kansas, Arkansas, Missouri, Minnesota, Iowa, Nebraska, South Dakota, North Dakota, Wisconsin, Michigan, Illinois, New Mexico and California and owns and operates, within said territory, approximately 265 retail gas filling stations and approximately 246 wholesale gas filling stations, the investment in said refinery, tank cars and filling stations amounting to several million dollars.

That the said Company has a market demand for its refined products in excess of the amount which it can manufacture from its own production.

Affiant further states that said Champlin Refining Company is the owner of Lots 30 to 35, inclusive, and 50 and 51, in Block 2, Roosevelt Place Addition to Oklahoma City, Oklahoma, and Lots 23 to 26, inclusive, Block 9 Armourdale Addition to Oklahoma City, Oklahoma, on each of which tracts of land is located a producing oil and gas well drilled and completed by said company, each at a cost of approximately $100,000.00 or over, and each of which tracts are a part of what is commonly known as the Oklahoma City oil pool and being within the bounds of the field and pool covered by the proration orders attached to plaintiff's bill of complaint herein.

That said Champlin Refining Company also owns the East Half (E. ½) of the Southeast Quarter (S. E. ¼) of the

Northeast Quarter (N. E. ¼) of Section Fourteen (14), Township Seven (7) North, Range Six (6) East, and an undivided one-half interest in the South Half (S. ½) of the Southwest Quarter (S. W. ¼) of Section Nine (9), Township Six (6) North, Range Six (6) East, both in Seminole County, Oklahoma, and both a part of what is known as the Seminole Field, on the first of which tracts this Company has three (3) completed oil wells which, including the property, cost said Company over $400,000.00, and on the second of said tracts this Company has an undivided one-half interest in six (6) producing oil wells which cost said Company approximately $125,000.00.

That said Company is running no oil through the lines from the Oklahoma City field, but is running such crude oil [fol. 180] as it can from the Seminole district to supply, together with what it has to purchase from other producers, the needs of its refinery.

Affiant further states that the Cimarron Valley Pipe Line Company has connected said Company's pipe line with the Oklahoma City field by an 8 inch line, with a capacity of approximately 18,000.00 barrels per day, which Cimarron Valley Pipe Line Company is a subsidiary of the Champlin Refining Company, and that said Champlin Refining Company owns a combination six and eight-inch line from the Seminole field from where it transports crude oil to its refinery at Enid, Oklahoma, which has a capacity of 11,000 barrels per day.

Affiant further states that said Company has resisted the orders promulgated by the Corporation Commission through the Operators' Committee, copies of which are attached to plaintiff's bill of complaint herein, and has refused to report to or pay any of the expenses of said Committee or Umpires, and has been cited to appear before the Corporation Commission to show cause why proceedings in contempt should not be instituted against said Company and said Company has been threatened with contempt proceedings in the event it neglects, fails or refuses, or for any reason violates said order so promulgated.

Affiant further states that said Champlin Refining Company has taken no part with other oil producers in an attempt to prorate the oil in the Oklahoma City oil field but has consistently refused to take part therein or to be bound by any order of the Corporation Commission concerning

the same, or any order prepared by said Operators' Committee, or to recognize any of said orders as being such as are authorized by law, or as the Corporation Commission or the said Operators' Committee had either authority or jurisdiction to make under the law or otherwise, and has shut in its production only because it has been threatened by the Corporation Commission with contempt proceedings and receivership of its properties; that it has consistently refused to make any application to the Corporation Commission or submit any evidence concerning proration of its oil for the reason that it has at all times consistently contended, and still does, that the Corporation Commission nor any agency of either the Corporation Commission or other oil companies have jurisdiction or authority of said company to regulate its oil production from its own properties, either in the way of proration or otherwise.

[fol. 181] AFFIDAVIT OF W. P. HASEMAN ON BEHALF OF PLAINTIFF-APPELLANT

I am a resident and citizen of Oklahoma City, Oklahoma, and am 52 years of age. I received my education at the Indiana University and the University of Pennsylvania and hold the A.B., A.M. and Ph.D Degrees. My major and minor subjects were Physics, Mathematics and Engineering. I am a member of the American Physical Society, the American Association of Petroleum Geologists and of the Honorary Scientific Society, Sigma XI. I am by training, education, experience and occupation a Research Physicist and Engineer. During 1907 to 1909 I was associate Professor of Physics in Indiana University and from 1909 to 1919 was Professor of Physics in the University of Oklahoma. I have spent the last ten years largely in Research and developmental work in Petroleum Geology and Engineering. I have recently made an analysis of the available proration production data from the Oklahoma City oil pool; the object of this analysis being to determine the extent of the decline of the production and the ultimate yield of oil in that pool.

An interpretation of the data of the Oklahoma City oil pool so obtained, indicates that the method of proration of production in practice is conducive to, and has resulted in a

material waste and loss of recoverable oil and gas. This waste is underground and consists largely of oil that has lost its natural intimate association and relationship with gas and vapors under pressure and has been left in the reservoir rock in such a condition that it cannot be produced economically, by any improved method of production. As evidence of this waste, the following examples are given.

Example 1

The quantity of oil in barrels produced from the Oklahoma City pool, and on file in the office of the proration officer, during the week ending December 23, 1929, and succeeding weeks thereafter, together with the number of producing wells at the end of each week, is tabulated in Table 1, and attached hereto.

The production data represent the total yield of oil from all types and classes of wells under the existing program of development and production in the pool. The effect of proration on the production in the pool must neeessarily be sought and determined from an analysis of the production from an average well in the pool and not from the production of either the exceptionally large or small well. The yield of the average well for the pool is to be defined and determined by dividing the weekly production in Table 1 by the number of wells producing at the end of the week in question. For example, the number of barrels produced during the week ending June 30, 1930, was 809,981 with 314 wells producing. The average well of the pool produced 2,579 barrels during the week.

It is evident that the extent of the decline of the production and the ultimate production from this defined average well, will be affected by the existing methods of development and production as well as by the existing and fixed [fol. 182] underground conditions. The production of the defined average well is tabulated in column 4 of Table 1. A graphical representation of the production data of the average well is given on Chart 1. This chart pictures progressively the relation of the weekly oil production from the average will, with the time in weeks. The graph shows a linear trend relationship between the barrels of oil produced each week, and the time in weeks. It is therefore possible to extend this line and thereby determine the

future weekly production of the average well under the existing conditions of development and production. The chart shows that within forty weeks from July 28, 1930, the average well in the pool as defined in Table 1 will be producing around 300 barrels per week. It is questionable whether such a well as this can be economically produced with present lifting devices.

The data table and chart show under proration that the production of the average well declined from 10,000 barrels per week on December 23, 1929, to less than 2,000 barrels on July 28, 1930, even though new wells were completed each week. The yield of the pool during this time was around 20,000,000 barrels, as shown by Column 5, Table 1, hereto attached, data for which was obtained by affiant from the office of the Proration Officer. During the same time 313 new wells were completed and available for production. At least 150 of these new wells produced during the entire period in addition to the 57 wells that were producing on December 23, 1929. Therefore, 207 wells produced approximately 20,000,000 barrels, giving a production of approximately 100,000 barrels per average well. Since the decline of the average well was from 10,000 barrels per week for the week ending December 23, 1929, to 1,403 barrels per week for the week ending July 28, 1930, indicating a decline of approximately 8,000 barrels per week and representing a yield of only 11.6 barrels of oil per barrel decline, comparable as with Seminole and Tonkawa where this factor exceeded 35 barrels per barrel decline. The yield from the average well, relative to its decline in production, is excessively low.

The chart gives data from which it is possible to readily compute the ultimate production of any well, with a ten acre spacing as in the Oklahoma City pool. Such a computation will give an estimated ultimate yield per average acre for 800 or more wells on 8,000 or more acres not to exceed 15,000 barrels per acre as evidenced in Chart 2, it being here assumed that there will be 800 wells ultimately completed and that the area drained thereby will be 8,000 acres.

Chart 2 represents the relation graphically pictured, of the weekly production per average well to the cumulative production at any given week end within the period of time represented by Table 1. From this chart it may be seen

that the weekly production declines with the increase of cumulative production such that the average 10,000 barrel well will cumulate approximately 190,000 barrels of oil. Since a 10,000 barrel well yields an ultimate of 190,000 barrels each barrel of the 10,000 yields only 19 barrels ultimately and with a spacing of ten acres per well a 10,000 barrel well will return a total acreage yield of 19,000 barrels. However, the average well during the life of the pool will not be as large as 10,000.

In fact the average well of the pool as reflected by the charts will be such that the acreage yield will not exceed 15,000 barrels per acre.

[fol. 183] The Seminole City pool, producing from shallower and thinner formations of the same geological age has already produced around 24,000 barrels per acre, with an estimated ultimate of 27,000 barrels per acre.

The average initial production of oil and gas, in the wells in the Oklahoma City pool has been much larger than the wells in Seminole, and other pools producing from the Wilcox sand and siliceous lime, yet the average acreage yield will be approximately one-half of that of the Seminole City pool.

It is generally conceded that the average acre of the Oklahoma City pool, contained originally, more oil and gas than Seminole, yet under existing methods of development and production, the yield will be much less.

This unnecessarily low yield per acre must be attributed, more to the method of production than to the method of development, because the development of the Oklahoma City pool is comparable to that of other deep Oklahoma pools. It is possible that other factors may have contributed some to this exceptionally low yield but the proration method of producing the oil is in the main, responsible for the low yield and huge loss of oil as will be evident from Example 2.

Example 2

The rate of oil production from a pool, lease, or a well, reaches a maximum value before the rate of the gas production reaches a like maximum. In other words, upon opening a well it requires some time for both the oil and gas in the fluid stream to be speeded up and acquire a maximum speed. In cases where the gas and vapor pressures move

the fluids through the producing reservoir rock into and out of the well, the yield of oil per hour from the well will reach a maximum in advance of the yield of gas per hour. In the Oklahoma City pool, a well will require around four hours to head up and flow oil at its maximum rate while it will require more than four hours to head up and flow its gas associated with oil, at a maximum rate. The rate of the oil is necessarily declining before the rate of producing the gas has reached its maximum value. In order therefore, to conserve gas and gas energy with the intermittent flow of a well, the flow should be stopped before the maximum rate of flow of gas has been reached. The probable intermittent period for the average well in the Oklahoma City pool will fall within four hours for efficient flow.

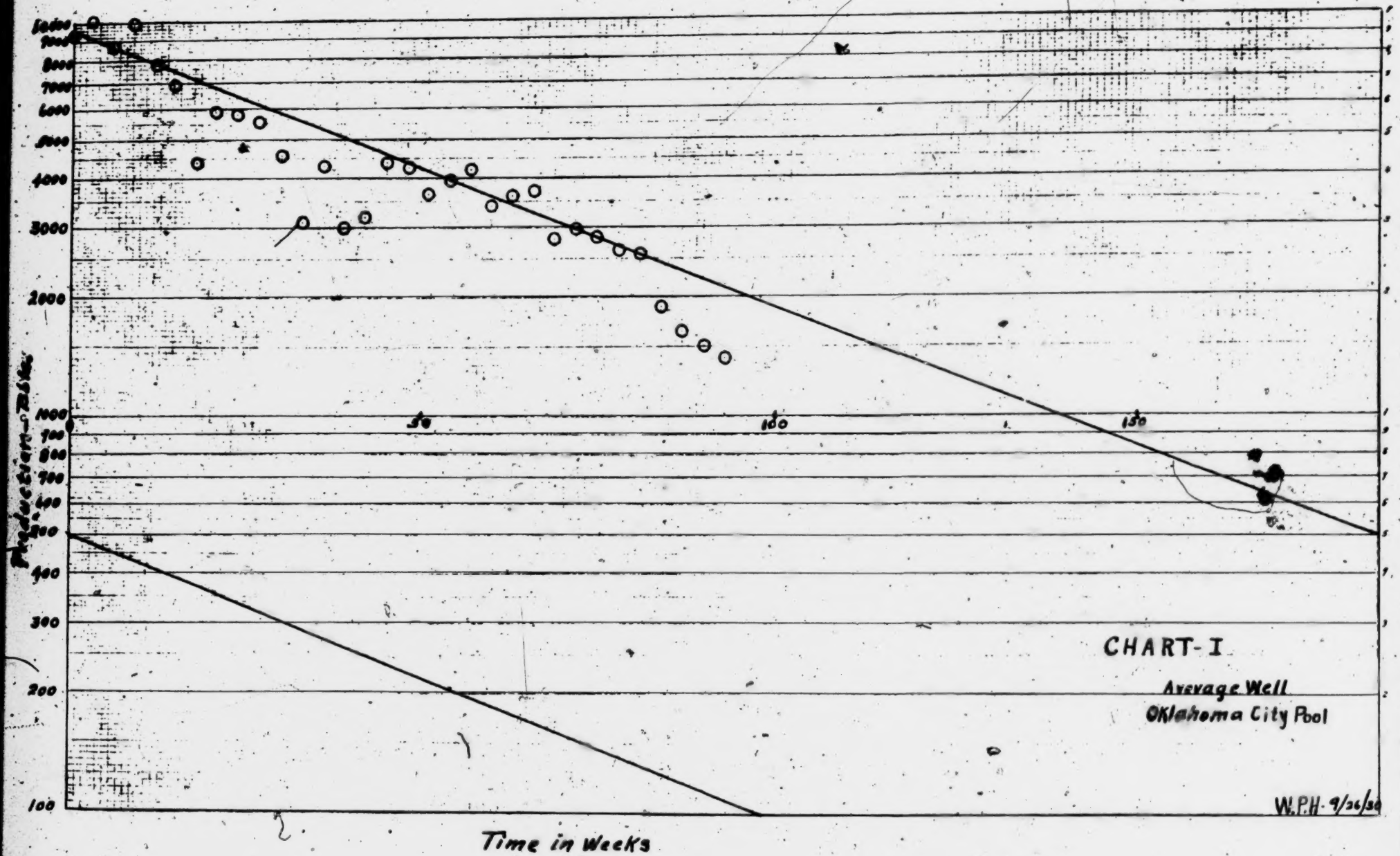
Gas and gas energy can be controlled and conserved in the steady flow of a well in a more practical way, by properly tubing the well and applying back pressure. Neither of these well known means of conserving gas and gas energy, have been put in force by the proration method of producing oil in the Oklahoma City pool.

The flowing of the average well wide open in the Oklahoma City pool for an arbitrary period of one day and then closing it for six to twelve days, produces the oil with an excess of gas and gas energy over that required if flowed efficiently. The proration method of producing oil in Oklahoma doubtless does assist in securing a better price for the oil and if applied may not injure the production of old pools, but it certainly has already materially decreased the ultimate production of the Oklahoma City pool. It is therefore not conserving the natural re-resources of the state. [fol. 184] Scientific and practical knowledge will not support the present proration method of producing oil in the Oklahoma City pool, as a means for the conservation of the natural resources, oil and gas.

Table I

Week ending	Production, bbls.	Number of producing wells	Production of average well (bbls.)	Total production, in bbls.
12-23-29	531,415	57	9,323	8,092,117
12-30-29	617,086	59	10,459	8,709,203
1- 6-30	595,634	68	8,760	9,304,837
1-13-30	716,676	72	9,953	10,021,513
1-20-30	573,560	73	7,857	10,595,023
1-27-30	541,514	78	6,942	11,136,587
2- 3-30	357,418	82	4,358	11,494,005
2-10-30	582,849	98	5,947	12,076,854
2-17-30	591,218	101	5,854	12,668,072
2-24-30	617,194	111	5,560	13,285,267
3- 3-30	555,835	122	4,556	13,841,152
3-10-30	416,103	133	3,129	14,257,255
3-17-30	618,878	143	4,326	14,876,133
3-24-30	462,044	155	2,980	15,338,177
3-31-30	513,269	161	3,188	15,851,446
4- 7-30	748,815	171	4,380	16,600,261
4-14-30	771,856	181	4,264	17,372,117
4-21-30	711,552	195	3,648	18,083,669
4-28-30	776,650	197	3,942	18,860,319
5- 5-30	892,604	212	4,210	19,752,923
5-12-30	752,163	219	3,434	20,505,086
5-19-30	830,915	229	3,628	21,336,001
5-26-30	923,138	247	3,737	22,259,139
6- 2-30	737,387	262	2,814	22,996,526
6- 9-30	808,841	272	2,973	23,805,037
6-16-30	790,117	278	2,832	24,595,484
6-23-30	791,397	301	2,629	25,386,381
6-30-30	809,981	314	2,579	26,196,862
7- 7-30	620,852	329	1,887	26,817,714
7-14-30	558,303	340	1,642	27,376,017
7-21-30	525,614	350	1,501	27,901,631
7-28-30	519,197	370	1,403	28,420,828

(Here follow charts I and II, side folios 185 and 186)


Production - Bbls.
10000
9000
8000
7000
6000
5000
4000
3000
2000
1000
900
800
700
600
500
400
300
200
100
0
50
100
150
Time in Weeks
CHART-I
Average Well
Oklahoma City Pool
W.P.H. 9/26/30

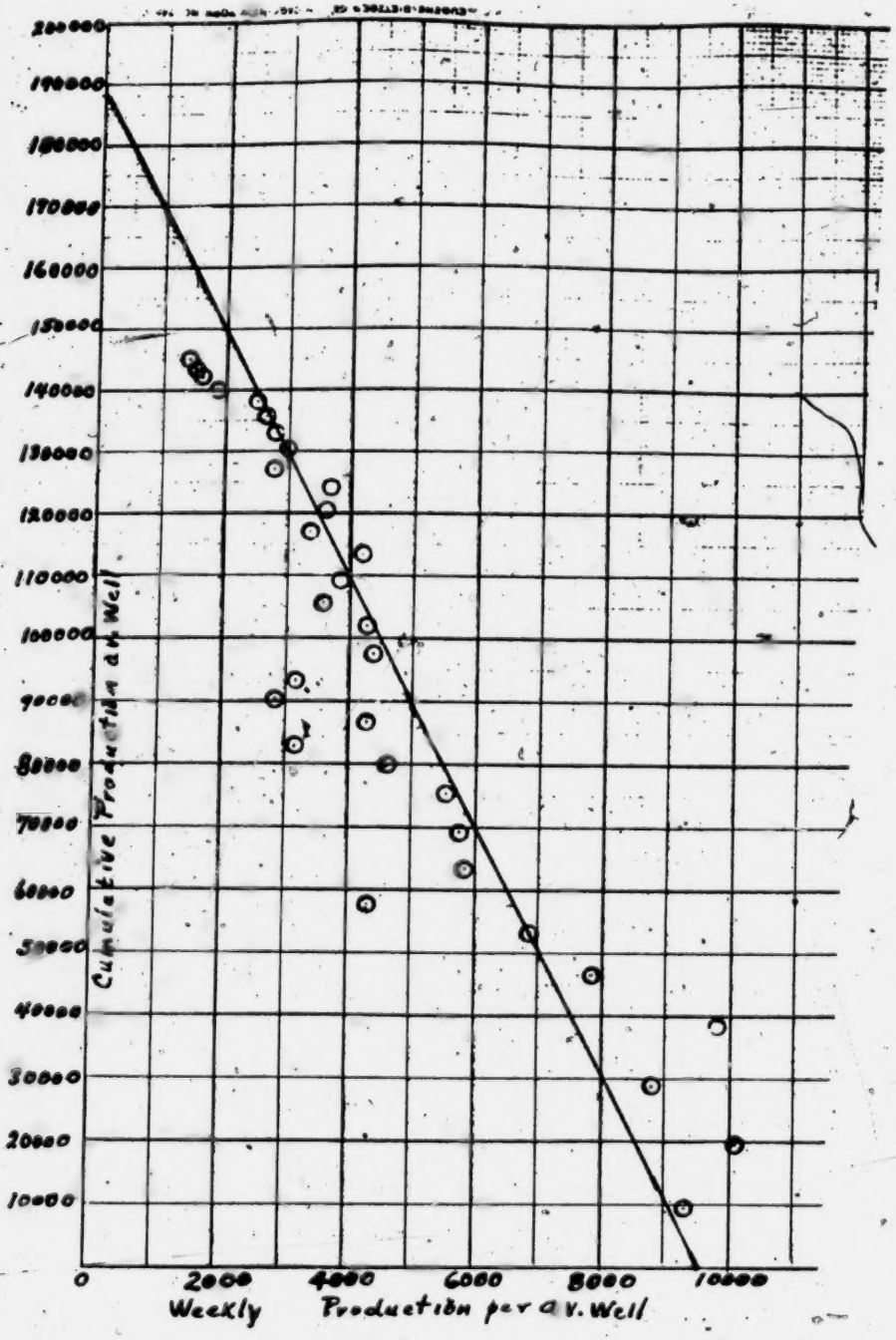

200000
190000
180000
170000
160000
150000
140000
130000
120000
110000
100000
90000
80000
70000
60000
50000
40000
30000
20000
10000
Cumulative Production av. Well
0
2000
4000
6000
8000
10000
Weekly Production per av. Well

Chart 2

[fol. 187] AFFIDAVIT OF E. G. WILMOTH ON BEHALF OF PLAINTIFF-APPELLANT

That he resides at Enid, Oklahoma, and is and has been at all times herein mentioned in the employ of the Champlin Refining Company, complainant herein; that it has been his duty to supervise the laying of an oil pipe line from a point near Lovell, Oklahoma, to the Oklahoma City oil field, which connects with the pipe line belonging to the Champlin Refining Company running from Lovell to its refinery at Enid, Oklahoma; that said pipe line is now completed to the Oklahoma City field and is connected to the oil wells of complainant in said field and also connected to its tankage; that said line is an 8 inch line and has a capacity of 18,000 barrels per day and the tankage constructed by said Company near its wells in the Oklahoma City field is one 80,000 barrels tank and two 5000 barrels tank, in addition to the usual lease stock tanks which have a capacity of about 4500 barrels to each well, and that there is completed in the field belonging to said Company two wells.

Affiant further states that said pipe line, and the tankage, are of the most modern type and constructed and especially designed to prevent waste, all of which is new and just finished and ready for use.

Affiant further states that the 80,000 barrel tank above mentioned was completed on the 7th day of September 1930, and the pipe line was completed to the Oklahoma City field wells on the 22nd day of September, 1930.

Affiant further states that as soon as said 80,000 barrel tank was ready to receive oil said company ran into said tank approximately 42,000 barrels of crude oil which runs were stopped when the wells were shut in and, as this affiant is informed and believes, said wells were shut in by order of the Corporation Commission to the Company.

[fol. 188] AFFIDAVIT OF G. E. LEVERTON, INTRODUCED ON BEHALF OF THE PLAINTIFF-APPELLANT

G. E. Leverton states that he is the Auditor for the Champlin Refining Company, plaintiff herein.

That he has been such Auditor for the last seven and one half years, and has had experience as an auditor and public accountant covering a period of fifteen years.

He has made the attached compilation which is marked "Exhibit A" for identification, being a statement of intrastate and interstate sales of refined products and crude oil of the Champlin Refining Company, plaintiff herein, from the period beginning July 1st, 1928, and extending to December 1st, 1930; that the time prior to July 1st, 1928, was not covered for the reason that the Champlin Refining Company suffered a fire which destroyed its office and records, and the figures were not available.

The statement hereto attached contains a summary of the entries of such shipments made by and under the supervision of this affiant at the time such products were manufactured, sold and handled by the Refining Company, and such figures are correct, and disclose correctly the shipments of the products therein named as such shipments actually occurred.

Exhibit "A" to the Affidavit of Leverton

[fol. 189] Statement of Intrastate and Interstate Sales of Refined Products and Crude Oil

	Sales within Oklahoma		Sales interstate		Total sales	
Last 6 months 1928:	Gallons	Barrels*	Gallons	Barrels*	Gallons	Barrels*
Gasoline	10,295,556	245,132.29	40,564,356	965,818.00	50,859,912	1,210,950.29
Kerosene	2,479,265	59,030.12	6,263,546	149,132.05	8,742,811	208,162.17
Fuel Oils	17,467,492	415,892.65	6,920,882	164,782.92	24,388,374	580,675.57
Lubricants	380,434	9,057.95	1,174,473	27,963.64	1,554,907	37,021.59
Total Refined	30,622,747	729,113.01	54,923,257	1,307,696.61	85,546,004	2,036,809.62
Crude Oil	.....	3,635.41	.....	.....	.....	3,635.41
Total for 6 mos. 1928	.....	732,748.42	.....	1,307,696.61	.....	2,040,445.03
12 months 1929:						
Gasoline	22,218,491	529,011.69	68,395,474	1,628,463.66	90,613,965	2,157,475.35
Kerosene	4,597,736	109,469.90	11,433,334	272,222.23	16,031,070	381,692.13
Fuel Oils	44,320,138	1,055,241.38	24,987,514	594,940.81	69,307,652	1,650,182.19
Lubricants	1,209,217	28,790.88	3,203,521	76,274.31	4,412,738	105,065.19
Total Refined	72,345,582	1,722,513.85	108,019,843	2,571,901.01	180,365,425	4,294,414.86
Crude Oil	.....	463,328.27	.....	50,510.55	.....	513,838.82
Total for 1929	.....	2,185,842.12	.....	2,622,411.56	.....	4,808,253.68
11 months 1930:						
Gasoline	17,538,389	417,580.69	67,580,115	1,609,050.36	85,118,504	2,026,631.05
Kerosene	2,879,997	68,571.35	11,976,689	285,159.26	14,856,686	353,730.61
Fuel Oils	24,306,703	578,731.02	20,560,877	489,544.69	44,867,580	1,068,275.71
Lubricants	1,953,410	46,509.77	5,156,473	122,773.15	7,109,883	169,282.92
Total refined	46,678,499	1,111,392.83	105,274,154	2,506,527.46	151,952,653	3,617,920.29
Crude Oil	.....	816,029.21	.....	.....	.....	816,029.21
Total for first 11 months 1930	.....	1,927,422.04	.....	2,506,527.46	.....	4,433,949.50
Grand Total	149,646,828	4,846,012.58	268,217,254	6,436,635.63	417,864,082	11,282,648.21

*Barrel of 42 Gallons.

[fol. 190] AFFIDAVIT OF F. C. WENTWORTH ON BEHALF OF PLAINTIFF-APPELLANT

That he is Field Superintendent for the Champlin Refining Company; that he has been engaged in oil field work for twenty-three years; that he had charge of drilling the Champlin wells in the Oklahoma City field, two in number, the first of which was finished on August 19, 1930, and the second on August 26, 1930; that the first well, on test, produced 4400 barrels of oil and approximately 80,000,000 cubic feet of gas, and the second produced, on test, 6000 barrels of oil and approximately 50,000,000 cubic feet of gas; that both wells are now shut in awaiting the outcome of court proceedings.

[fol. 191] RAY M. COLLINS testified on behalf of plaintiffs-appellants as follows:

I am the same Ray Collins who executed an affidavit on behalf of the State, which has been used in this case. I draw a salary of $2,000.00 a month as Umpire of the oil fields in the State of Oklahoma, which is paid by all of the producers with the exception of the four or five who are against proration. It is paid in proportion to the amount of oil that is being run out of the field. I was appointed by the Corporation Commission of the State of Oklahoma. The Champlin Refining Company does not contribute anything to my salary. I was recommended to the Corporation Commission for the position by a group of men calling themselves the "Operators' Committee." I have had that position off and on since October 1926. My office is at Tulsa. I have a number of agents and employees, which are necessary to operate the office as directed by me. These men receive their salary from the same source. Otto Bradford is one of these men. He has under him certain agents who operate in the Oklahoma City field who receive their salaries from the Oklahoma City operators. The Champlin Refining Company does not pay any of his salary. The State of Oklahoma does not pay any of the salaries.

The gauges in the Oklahoma City field and the gauges in the other fields in Oklahoma which are taken from time to time are taken in the manner which is stated in the Corpo-

ration Commission orders. The gauges are taken by the operators themselves. The gauge is verified by producers on the leases offsetting the one that is being gauged. They have their men on the tanks and verify the gauge. I make the official report of the gauges to the Corporation Commission every month.

In response to questions by Judge Robert L. Williams the witness testified that long before they had proration some 15 years ago the Corporation Commission had wells gauged and had reports made but that he could not say how the wells were gauged 15 years ago; that the Corporation Commission kept records of the gauge of each well taken years ago.

The witness testified as follows: My agents and employees do not take these gauges. The gauges are made by private individuals who report to my office or to Otto Bradford. I appointed a superintendent on each lease as witness to the gauge who is in each instance an employee of the company that is operating the well, and the report is sometimes made verbally and sometimes made in writing.

Q. In so far as the other operators in the field who are not adjacent to these particular leases they have nothing to do with the gauging of the wells, do they?

A. Yes, sir.

Q. In what way?

A. They are witnesses of the gauges on the lease that offsets their lease.

If a well comes in the man that owns the offset well, or his representative, verifies the gauge made by the owner of the [fol. 192] well. One is a check on the other. I do not know how the Oklahoma City pool has been handled in every case. In all the other fields I send out a written letter stating the gauges are to be taken on a certain date. We do not take all of the gauges in the Seminole field and all of the wells on the same date. We do not give everybody in the Seminole field a notice every time we are going to gauge each well. In a pool we are going to gauge I notify all the operators in the pool with the exception of when a connected well is to be gauged. If a well comes in during the period between gauges and that well is to be put on proration then I notify

offset owners only. When I gauge the Seminole pool as a whole I notify the operators of the pool. I mean by pool, the wells in the pool. We have something like 15 or 16 pools. We call the Oklahoma City pool here one pool. If the gaugers start taking the entire pool of Oklahoma City they are all to be notified. We have not had to do that up to the present time because the Oklahoma City pool has been on a time basis. The Oklahoma City pool is gauged regularly by the operators themselves. The owners of the Seminole wells are not notified of the intention to gauge a well in the Oklahoma City field and the owners of leases in the Oklahoma City field are not notified when a gauge is to be taken in the Seminole field. Dissatisfied operators have never asked for the re-gauge of a pool. They have asked for one or two wells to be re-gauged, which we have done.

We have not attempted in the Oklahoma City field to notify a well owner who does not offset a well that is to be gauged that the well is to be gauged. In the other pools all the operators in the pool are notified that the gauges are to be taken on a date and are notified to witness offset gauges. They are not told to witness a gauge half a mile away or in any other field.

We have been able to tell what the potential of the Oklahoma City field is pretty well. Mr. Bradford has been attending to the Oklahoma City field. He is under me but at the same time I have given him the entire charge of the field. I have been in the Oklahoma City field a good deal of the time but I have not kept up with Bradford and his work in that field in the way I should.

Cross-examination:

I have just tried to carry out what the Corporation Commission has ordered me to do. In the Oklahoma City field up to the present the orders have been on the time proration basis and not on a percentage or potential basis. The only element in which the potential became proper is to be considered at all was in considering the probable amount of time. No producer has been excluded from contributing to my salary. The Champlin Refining Company was asked to contribute. The general scheme was that any person who had production was invited to come in and pay his proportionate part. I do not know that anyone ever objected to

my appointment as Umpire. I was appointed by the Corporation Commission and the appointment was approved by the Governor. My men and Mr. Bradford were so appointed and approved.

[fol. 193] Redirect:

Time proration is that we allow a man to open his well for 30 minutes or an hour and run so many barrels an hour. It is not necessarily true that the first 30 minutes run of one of the flush wells in the Oklahoma City field will produce more oil than the last 30 minutes or the last 10 hours run. In the old field that is true. Under our rules and instructions a party was allowed to open his well for a certain number of hours. Formerly he could divide that up into such hours as he wanted to take. Since December 12th he has to take his time all at once. Before that time he could divide his own time allowance to suit himself.

The distribution of the funds by which salaries were paid was first handled by The Pure Oil Company, then by the Barnsdall Oil Company and later by the Carter Oil Company.

[fol. 194] OFFERS IN EVIDENCE

The order of the Corporation Commission No. 5189, entered in Cause No. 10,146 of date June 30, 1930, was introduced in evidence on behalf of plaintiff-appellant. This order appears as Exhibit "A" to the Second Amended and Supplemental Bill of Complaint and reference is thereto made for its contents.

The order of the Corporation Commission No. 5292, entered in Cause No. 10,146 of date August 30, 1930, was introduced in evidence on behalf of plaintiff-appellant. This order appears as Exhibit "B" to the Second Amended and Supplemental Bill of Complaint and reference is thereto made for its contents.

The order of the Corporation Commission No. 5292, entered in Cause No. 10,146 of date August 30, 1930, was introduced in evidence on behalf of plaintiff-appellant. This order modifying the order of the same number and same date appears as Exhibit "B-1" to the Second Amended and

Supplemental Bill of Complaint and reference is thereto made for its contents.

The order of the Corporation Commission No. 5337, entered in Cause No. 10,146 of date September 30, 1930, was introduced in evidence on behalf of plaintiff-appellant. This order appears as Exhibit "C" to the Second Amended and Supplemental Bill of Complaint and reference is thereto made for its contents.

The order of the Corporation Commission No. 5369, entered in Cause No. 10,326 of date of October 28, 1930, was introduced in evidence on behalf of plaintiff-appellant. This order appears as Exhibit "D" to the Second Amended and Supplemental Bill of Complaint and reference is thereto made for its contents.

[fol. 195] The order of the Corporation Commission No. 5413 entered in Cause No. 10,326 on December 30, 1930 was introduced in evidence on behalf of plaintiff-appellant. The order is in words and figures as follows:

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause No. 10326. Order No. 5413

In the Matter of the Application of WIRT FRANKLIN for Rules and Regulations to be Established by the Commission to Prevent Waste of Petroleum in the Producing Oil Fields of the State of Oklahoma

Order Extending and Modifying Order No. 5369

Comes now petitioner herein and various and sundry producers of oil in the State of Oklahoma, and this matter having been set for hearing on this 29th day of December, 1930, and the Commission having heard and considered the evidence of the petitioner and sundry other persons, and the evidence of any and all persons opposing the supplemental petition herein, and the Commission having made an investigation of the facts alleged and of the conditions in the oil fields of Oklahoma, and being fully advised in the premises, finds as follows:

(a) That areas to be covered by the rules and regulations herein prayed for are all of the oil producing areas in the State of Oklahoma and those new sands or areas which

may be brought into production during the months of January, February and March, 1931.

(b) That notice by publication on all persons or classes interested in this proceeding and in the rules and regulations to be established hereby has been given, as required by law, in a newspaper of general circulation in this State, and that, in addition, reasonable notice in writing has been served personally on all persons, firms and corporations known to petitioner to be interested in this proceeding and due proof of service of notice has been made and filed herein.

(c) The Corporation Commission finds from the evidence that there is an overproduction of crude oil in the State of Oklahoma attended by waste of gas and of gas pressure and that the producers of crude oil in the oil pools of Oklahoma are threatening to and will, unless restrained by the rules and regulations of the Corporation Commission, commit physical waste of crude oil, economic waste, underground waste, surface waste and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands, and that the commission of such waste is so imminent in each of the areas involved in this proceeding that orders, rules and regulations of this Commission are necessary in order to prevent such waste.

The Commission further finds that there is a general overproduction and importation of crude and refined pe- [fol. 196] troleum in the United States, and that this fact tends to reduce the amount of crude oil that can be produced in the State of Oklahoma without waste; that the potential production of crude oil in the United States is at this time approximately 10,000,000 barrels per day, and imports of crude and refined petroleum aggregate about 300,000 barrels per day, thus creating a total possible current supply of 10,300,000 barrels per day as against an approximate daily demand for domestic use and export of 2,500,000 barrels per day. That by reason of this great over-supply and threatened waste, potential production is now being curtailed in Oklahoma and other producing regions, and unless there is a continuance of curtailment of production in the areas involved herein, there will be an increase in waste in this State and an undue exhaustion of

our oil resources. The Commission finds that this petroleum situation constitutes a grave state emergency and that the laws of the State of Oklahoma and the powers of the Corporation Commission should be availed of to remove the same.

(d) The Commission further finds from the evidence that, in addition to the excess of potential and actual production and imports over current demand, there are stocks of petroleum on hand in the United States aggregating more than 670,000,000 barrels, which stocks are excessive and beyond the needs of the petroleum industry. That by reason of the excessive supply thus indicated, the purchasers of crude oil in Oklahoma are unwilling to purchase crude oil in Oklahoma for storage purposes in any amount that would be adequate to take care of the surplus of potential production over current demand and that, therefore, there is not sufficient empty tankage available to take care of said excess and unless production in Oklahoma is curtailed, much oil would necessarily go to earthen storage where it would evaporate and escape and thus be wasted.

(e) The Commission finds from the evidence that in order to curtail the production of crude oil in Oklahoma in a manner to prevent the commission of waste and to protect the coequal rights of producers in each pool, it will be necessary to enforce proportionality of taking from the wells and leases in each of the pools where the potential production thereof exceeds the reasonable market demand therefrom, and that unless such proportionality is required, injustice would be done as between producers in the same pool in that drainage would occur from the less active leases or wells to the more active leases or wells, and an undue proportion of the gas pressure would be utilized by some operators to the detriment of others and unfair discrimination would arise as between pools.

(f) The Commission further finds that the rated potential daily production of crude oil from the wells in Oklahoma during the month of January, 1931, is and will be approximately 6,252,219 barrels and that during the months of February and March, 1931, the said rated potential daily production will be 6,686,564 barrels and

7,263,077 barrels respectively, and that the daily demand for crude oil from Oklahoma during the months of January, February and March, 1931, will range between 465,000 barrels per day in January, which the Commission estimates as the probably demand, and 506,095 bbls. per day, which is the maximum potential demand, as hereinafter explained, and that in the month of February the estimated probable demand is 469,000 bbls. per day, with a maximum potential demand of 506,550 bbls. per day, and in March the probable demand will be 470,000 bbls. per day, with a maximum potential demand of 500,010 bbls. per day. Said distinction between probable demand and maximum potential demand arises from the uncertainty of the market outlet from what is known as the [fol. 197] "Class A" pools, as described in the Order of October 28, 1930. The Prairie Oil & Gas Co., having announced that it would withdraw as a purchaser of oil on Jan. 1, 1931, if said withdrawal is carried out it would leave the demand from the "Class A" pools at 175,905 bbls. per day, approximately, but if said "Class A" pools could re-establish their market it would potentially be approximately 217,000 bbls. per day in the month of January, and this same relative difference between the demand as now appears probable and that which might possibly be established would account for the difference in the total statewide demand as above referred to. That therefore, and by reason of the facts found in this order, the potential production from each of the pools and classes of pools involved in this proceeding is so far in excess of the reasonable market demand that the full potential production cannot be produced without waste.

The Commission further finds that if no restraint were placed upon producing wells or wells now completed or upon wells hereafter drilled during the months of January, February and March 1931, the potential production of the State of Oklahoma would be much greater than that above stated and would exceed all transportation and marketing facilities and reasonable market demands to such an extent as to force large quantities of oil into earthen storage in this State and otherwise cause waste of a character prohibited by the laws of the State of Oklahoma. In order to prevent such waste, the Commission finds that

it is necessary to curtail the production from the pools in this State and each of them during the said months of January, February and March, 1931, and according to the subjoined schedules showing the classes of pools to be prorated, the potential production of each, the estimated daily production of each under proration and the resulting total production, under proration, for the said three (3) months' period:

	Estimated potential	Maximum potential demand	Estimated probable demand
January:			
Class A	247,000	217,000	175,905
Oklahoma City	5,388,298	85,000	85,000
Outside	616,921	204,095	204,095
Total State	6,252,219	506,095	465,000
February:			
Class A	248,295	213,615	176,175
Oklahoma City	5,838,804	90,000	90,000
Outside	604,465	202,825	202,825
Total State	6,686,564	506,440	469,000
[fol. 198]			
March:			
Class A	239,646	210,646	180,636
Oklahoma City	6,411,459	90,000	90,000
Outside	611,972	199,364	199,364
Total State	7,263,077	500,010	470,000

[fol. 199] Suggested Potential and Allowed Production of Crude Oil, State of Oklahoma

Proration Schedule, January 1, 1931, to March 31, 1931

(Except Class A and Class H Pools)

	January		February		March	
	Estimated potential	Estimated production	Estimated potential	Estimated production	Estimated potential	Estimated production
Class B:						
Allen (Wilcox)	6,704	3,352	6,369	3,185	6,051	3,026
Allen (Cromwell)	16,534	8,267	16,038	8,019	15,557	7,779
Bowlegs	25,399	12,700	24,637	12,319	23,898	11,949
Earlsboro (proper)	26,239	13,120	25,452	12,726	24,688	12,344
Earlsboro (Townsite)	9,475	4,738	9,001	4,501	8,551	4,276
Little River	45,841	22,921	45,466	22,733	44,102	22,051
East Little River	21,265	10,633	20,202	10,101	19,192	9,596
Marshall-Lovell	3,658	1,829	3,548	1,774	3,442	1,721
Maud	5,316	2,658	5,157	2,579	5,002	2,501
Mission	12,664	6,332	12,284	6,142	11,915	5,958
Sasakwa	8,169	4,085	7,761	3,881	7,373	3,687
Searight	11,156	5,578	10,821	5,411	10,496	5,248
Seminole	25,816	12,908	25,042	12,521	24,291	12,146
East Seminole	3,651	1,826	3,541	1,771	3,435	1,718
St. Louis	36,294	18,147	35,705	17,853	34,634	17,317
Sub total	258,181	129,094	251,024	125,516	242,627	121,317
Class C:						
Carr City	42,014	12,184	40,035	11,642	44,163	12,625
South Earlsboro	28,175	7,044	25,358	6,340	22,822	5,706
Sub total	70,189	19,228	65,393	17,982	66,985	18,331

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	January		February		March	
	Estimated potential	Estimated production	Estimated potential	Estimated production	Estimated potential	Estimated production
Class D:						
Konawa	67,590	12,673	65,211	12,227	61,950	11,616
Class E:						
East Earlsboro	36,466	15,000	34,643	15,000	32,911	15,000
West Asher-Wanette	53,777	7,200	58,588	7,200	61,659	7,200
West Seminole	11,373	3,000	10,236	3,000	10,236	3,000
Wewoka	40,000	4,000	40,000	4,000	60,000	4,000
Sub total	141,616	29,200	143,467	29,200	164,806	29,200
Class F:						
Tatums	37,000	4,500	35,000	4,500	32,000	4,500
Chandler	25,600	2,500	34,320	2,500	23,104	2,500
Sub total	62,600	7,000	59,320	7,000	55,104	7,000
Class G:						
West Perry	1,675	600	1,500	600	1,400	600
Orlando	3,671	400	3,300	400	3,000	400
Twp. 20N-R.4W	1,400	400	1,250	400	1,100	400
Sub total	6,746	1,400	6,050	1,400	5,500	1,400
Wildcat wells:						
New Wells (outside of Okla. City)	5,000	500	5,000	500	5,000	500
Free production for testing	3,000	3,000	5,000	5,000	5,000	5,000
Unprorated small wells in prorated areas	2,000	2,000	4,000	4,000	5,000	5,000
Total	616,921	204,095	604,465	202,825	611,972	199,364

[fol. 200] (g) The Commission finds that the order numbered 5369 and the rules and regulations adopted October 28, 1930, should be continued in force for the first quarter of 1931 as modified by this order and by such supplemental or ancillary orders as may be made by the Commission from time to time. In this connection, the Commission finds that it is characteristic of the oil producing business that the reasonable market demand and the potential production of oil pools sometimes change abruptly and frequently and it is therefore necessary that the order, rules and regulations be made sufficiently flexible to permit prompt readjustments of allowable percentages of production in order to conform the permitted production to the reasonable market demand. For these reasons the Commission would request everyone interested and instruct the umpire and operators' committees to promptly advise this Commission of such changes in order that proper ancillary or supplemental orders may be made. The purpose of the Commission is to recognize fully the reasonable market demand for each pool and not to curtail production below such demand where the transportation or marketing facilities are adequate but to allocate such market demand ratably among the producing leases therein in proportion to the potential production of each lease to the end that the coequal rights of the producers may be protected and the waste incident to the production of oil in excess of the transportation or marketing facilities or the reasonable market demand may be prevented.

(h) The Commission finds from the evidence that the curtailment and the varying percentages as between pools prescribed in the schedules contained in paragraph (f) herein are necessary and reasonble in order to reduce production in this State to the reasonable market demand and in a manner least injurious to the producers and royalty owners as a whole, and in order to prevent unfair and unreasonable discrimination in favor of any one pool or common source of supply as against another.

The Commission finds that the varying percentages of curtailment as between pools as set forth in paragraph (f) of this order are necessary, fair and reasonable because of the peculiar conditions in each case and in this, to-wit: that said pools are not all served in common by the same

pipelines and purchasers; that the reasonable market demand from certain of them is greater in proportion to potential production than in the case of others; that some of them are older than others and have been prorated longer than others, under orders of the Corporation Commission with a consequent greater reduction in potential flow and smaller possible production per well per day and are, therefore, accorded a higher percentage allowable production; that in may cases individual pools are served by local purchasers whose facilities cannot be extended to the others, and in certain of the pools the sand and water conditions prevent as great curtailment as is possible in others, and that in certain pools there is a more intensive drilling campaign and wells of larger capacity than in others. The Commission also finds that in the making of said schedule in paragraph (f) the producers and purchasers in all of said pools were consulted and meetings of said producers and purchasers were held at which all of the foregoing factors were considered and that said schedule represents the consensus of opinion of said producers and purchasers as to reasonableness of arrangement, necessity and convenience of producers and purchasers and equity as between the various common sources of supply under present circumstances.

The Commission finds that the basis of classification of [fol. 201] pools for the application of the varying percentages of curtailment as shown by the schedule in paragraph (f) herein is the existing relation between the potential production of each pool and the amount of crude oil which can be produced from said pool without waste. That because said relation is not the same in all the pools involved, the percentages of curtailment must necessarily vary as between pools. A uniform percentage applied to all pools would result in the permitted production from some of them being less than the reasonable market demand therefrom, while in others the permitted production resulting from such uniform percentage would exceed the amount which could be produced therefrom without waste.

(i) The Corporation Commission further finds that in addition to the prevention of waste of crude oil, the establishment of the curtailment plan in this order set forth will

tend to conserve natural gas and gas pressure in the pools to which it shall be applied.

(j) The Commission further finds from the evidence that the best manner of applying curtailment of said "Class A" pools, is as follows, to-wit: That in each of said "Class A" pools all leases therein where the per well average per day is ten barrels or less should be exempted from curtailment or proration because to curtail or prorate said ten barrel well or wells making less than ten barrels would be to reduce the output therefrom in many cases below the point of practical operation and thus compel their abandonment which would constitute a waste of an irreplaceable natural resource, and for the further reason that many of such wells produce water along with the oil and it is necessary to pump them each day in order to prevent their injury by water encroachment. That in each of said "Class A" pools each lease should receive said exemption up to an average of ten barrels per well per day but in the case of those leases where the average per well exceeds ten barrels per day, the excess should be curtailed 50% so that, for example, an 80 acre lease with 8 wells thereon which is making a total of 100 barrels per day should be curtailed and prorated so that it would receive an exemption of 80 barrels and the remaining 20 barrels of potential should be cut to 10 barrels, so that the total allowable production from such lease would be 90 barrels per day. In this manner the Commission estimates that the production from the "Class A" pools will be curtailed to the reasonable market demand therefrom.

(k) The Commission finds that the full potential production from the Oklahoma City pool cannot be produced without waste, including physical waste and waste incident to the production of crude oil or petroleum in excess of the reasonable market demand, and that the reasonable market demand from said pool at the present time, and during January, 1931, is and will be approximately 85,000 barrels per day, and that in the month of February, 1931, said reasonable market demand from said pool will be approximately 90,000 barrels per day, and that in the month of March, 1931, the reasonable market demand from said pool will be 90,000 barrels per day, and that the market demand herein named is subject to increase and the Commission

therefore finds that the orders, rules and regulations should [fol. 202] be made sufficiently flexible so that increases or decreases in market demand from said Oklahoma City pool and increases or decreases in potential production therefrom, can be recognized by ancillary orders of the Commission, and that for this purpose the Umpire and Operators' Committee should be instructed to compute from time to time, the rate of curtailment necessary in order to conform the permitted production to the reasonable market demand from the said Oklahoma City pool and to report the same to the Commission with the facts in support thereof as a basis for such ancillary order; it being understood, however, that whatever reasonable market demand develops for crude oil from the Oklahoma City pool shall be prorated among all the producing wells therein, so that each well or lease will be permitted to produce its proportionate share of the amount of oil that may be produced from said field without waste.

The Commission further finds that if an increased reasonable market demand should be asserted the permitted production from the Oklahoma City pool could be increased in a substantial and corresponding amount without discrimination as against other pools.

The Commission finds from the evidence that crude oil and natural gas occur together, or in close proximity to each other in the ground, and that there is a common gas pressure throughout a common pool which exerts an energy or force to move the gas and oil toward the point of least resistance, and that therefore when wells are drilled into a pool or structure the oil and gas become migratory, and, having the power of self transmission, will move from one property to another, underground, in such pool; and that when some of the wells in such a common pool are permitted to produce at a greater proportion of their capacity than others, drainage occurs from the less active to the more active wells, if such disproportionate condition is continued; that in the Oklahoma City pool there is a heavy gas pressure which would cause such drainage should disproportionate taking of crude oil and gas be permitted; that the history of the oil producing business in this and other surrounding states shows that in the case of flush pools where proportional taking from the wells is not enforced, and

where the full production from the pool cannot be taken, either because of inadequate transportation facilities or because the reasonable market demand does not equal the potential production, producers who do not have physical or market outlets will be forced to produce their well to capacity in order to prevent drainage of the oil to the wells of such producers as do have adequate physical or market outlets. In such cases, in the absence of adequate steel storage available to every producer, some of them will flow the oil into earthen pits. This has occurred many times in the oil pools in Oklahoma and surrounding states and has always caused actual physical waste of the crude oil through evaporation, leakage, and washouts to a very large extent. The Commission finds that this would be the case in the Oklahoma City field, and in many other fields of the state if production were not curtailed as provided in this order.

The Commission further finds that to permit the wells in the Oklahoma City field to flow wide open and continuously, or disproportionately and without limitation as to time, would cause serious underground waste.

The Oklahoma City operators have petitioned this Commission for permission to change the method of proration [fol. 203] in said pool from the time basis to the basis of percentage of daily potential production and this Commission's rules and regulations with reference thereto are embodied in a separate supplemental order this day issued. Proration of the Oklahoma City pool has heretofore been on the time basis because the operators requested it and because there was no practicable way of taking accurate gauges as a basis for proration by the percentage of potential method, there being no facilities for handling the oil that would be produced while the gauge was being taken. But the Commission now finds that a reasonably accurate gauge of potential production may now be taken and that under the circumstances as they now exist percentage proration would be better for the field in regard to reducing the possibility of waste and more equitable as between producers.

(1) The Commission finds that the potential production of the State of Oklahoma now so far exceeds the reasonable market demand from said State as a whole, and the re-

sulting curtailment of producing wells has become so drastic and severe, that it would be inequitable and unfair and discriminatory to hereafter permit full production from wild-cat wells hereafter drilled which open new pools, sands or zones, and the Commission therefor finds that all wild-cat wells or wells opening new pools, sands or zones completed or brought into production after the date of this order should be limited to a production of 50 barrels per well per day, after one day open flow for test, and until otherwise ordered by the Corporation Commission.

The Corporation Commission further finds that the allegations of the supplemental petition filed herein are true and correct, and that accordingly these conditions of waste now exist in said pools, and commission of waste is imminent, and the same should be prohibited and prevented, and the following rules and regulations are necessary, reasonable and appropriate for that purpose.

It is therefore ordered by the Corporation Commission or the State of Oklahoma as follows:

1

The areas to be subjected to the rules and regulations of the Corporation Commission are all of the oil pools in the State of Oklahoma, and such new pools, sands or zones as may come into production during January, February and March, 1931,

2

Ray M. Collins is hereby appointed as Umpire and Agent of the Commission to enforce the rules and regulations herein made and he is hereby authorized to employ as many assistants as he shall deem necessary.

3

Where percentage proration is applied a gauge of producing wells shall be taken in the following manner: the gauge to determine potential shall be taken by each operator in the pool in respect of the lease or leases owned by him therein and then producing, such gauge to be taken between the hours of seven A. M. on the day set by the Order of the [fol. 204] Commission, and seven A. M. on the following

day. Prior to the taking of such gauge and in respect of each producing lease covered hereby the Umpire shall appoint a representative of an operator owning a lease adjoining the particular property to be gauged, and shall notify the operator whose property is to be gauged of the name of the representative, such notification to be given prior to the taking of such gauge. It shall be the positive duty of such representative to remain on the lease that is being gauged throughout the entire day that the gauge is being taken to witness the gauging of the production therefrom; and immediately upon the completion of such gauge, such witness and the operator whose property was gauged shall file a written statement with the Umpire showing the production of said lease, and of each well thereon for the day said gauge is taken. The production so shown shall constitute the potential for said lease until the next gauge is taken. During the time this Order is in force a similar gauge of each property shall be taken from time to time as the Umpire and Operators' Committee may designate but not less than once each month. Such open gauges shall be taken in the following pools: Wewoka (Section 30 and Townsite), East Earlsboro, South Earlsboro, Section 29-9-6 (West Seminole), the flush wells in the Carr City pool located in Sections 2 and 3, Twp. 8, Range 5, and the flush wells in the Tatums pool.

On the basis of open gauges heretofore taken in East Little River, Konawa, West Asher-Wanette, Earlsboro Townsite and Sasakwa, the potential production shall be declined 5% per month until further order of the Commission. On the basis of gauges already taken of the Wilcox sand wells of the Allen Pool, the potential shall be declined 3% each month, with the exception of the Sinclair-Cully 'A' Lease, Blackwell Fleet lease and the Texas-Lewis lease, which shall be declined 5% per month, and the Texas-Dinah lease, which shall be declined 10% per month; all other wells in the pools of the Greater Seminole Area shall be declined 3% a month.

4

Each person, firm or corporation having the right to drill into and produce oil from any of the flush or semi-flush

pools or areas and extensions thereof that are covered by this Order may take from such pool or area and extension thereof only such proportion of all crude oil and petroleum that may be produced therefrom under this Order as the production of the well or wells of such person, firm or corporation in said pool or area bears to the total potential production of such pool or area. In the case of each such pool or area the Umpire and the Operators' Committee for said pool or area shall report from time to time any changes in potential production or reasonable market demand so that this Commission may change the percentage allowable to equal the reasonable market demand.

5

Where shortages and overages have occurred under previous orders of this Commission, the same shall be carried forward and adjusted during the month of January, 1931. Any lease showing an average of one barrel or more at February 1, 1931, or at the first day of any month thereafter during the life of this Order shall be immediately reported by the Umpire under oath to the Corporation Commission as a basis for citation and such report shall contain in addition to the location of the property and the amount of the overage, the names and addresses of the [fol. 205] lessee, the purchaser of the oil and the transporter. Leases which are being gauged according to a decline curve and showing a shortage at the end of any month of more than two days allowed production shall take as their potential for the following month the daily average production of the last ten days of the month. And in the case of such leases, shortages of two days allowable production or less shall be credited on the next month's allowed production.

6

To establish equality between producing wells and drilling wells, each well now drilling in any of said areas, or which may be commenced in said areas or in any new areas prior to March 31, 1931, shall take a delay prior to being brought into production, equal to the accumulated shut-in time and accumulated equivalent time resulting from pinching of producing wells from the beginning of the proration

period in each pool, said period of delay to be computed in each instance after allowing seven (7) days for the cement to set: Provided the maximum shut-in time in each of said pools shall be according to the following schedule:

Area	No. of days cement to set	No. of days of open flow for test	Days shutdown
Oklahoma City	7	8 hours	57
East Earlsboro	7	1 day	41
Konawa	7	1 day	16
West Asher-Wanette	7	1 day	16
Marshall-Lovell	7	1 day	16
South Earlsboro	7	1 day	16
Seminole, et al	7	1 day	16

Previous orders of the Corporation Commission as to wells now completed but not on production shall be continued in effect as to the shutdown requirements therein. Wildcat wells hereafter completed and opening new pools, sands, or zones shall have one day of open flow for test and thereafter the production therefrom, together with that from subsequently completed wells therein, shall be pinched in to 50 barrels per well per day until further order of the Corporation Commission. A wildcat well shall be considered as one outside of a pre-existing drainage area.

7

That all purchasers and pipeline carriers of oil in the State of Oklahoma be and they are hereby forbidden to aid or abet producers in violating this Order.

8

Attention of the producers in each pool is hereby directed to Section 7959, Compiled Oklahoma Statutes, which provides that any person, firm or corporation may institute proceedings before the Corporation Commission or apply for a hearing upon any question relating to the enforcement of the conservation laws. In this connection, producers in each of the pools in Oklahoma are invited to appear before the Commission at any time that they may deem themselves peculiarly injured by the administration of this order in any particular or in any manner discriminated against, and the Commission will hear and act upon the evidence disclosed in such hearing. Notice should be given to the Umpire and Operators' Committee of the in-

[fol. 206]

tention to thus appear before the Commission on any such question.

9

Class A Pools: All oil pools in the State designated as "Class A" pools shall be prorated in the following manner. All leases in said pools which have a potential production in excess of an average of 10 barrels per well per day shall be curtailed 50% of the excess over such 10 barrels per well per day average. In all leases in said pools an exemption from proration of an average up to 10 barrels per well per day shall be allowed. The following is an illustration of what is intended by this regulation, to-wit: an 80-acre lease with 8 wells thereon which is making a total of 100 barrels per day will be allowed an exemption of 80 barrels and the remaining 20 barrels will be cut to 10 barrels so that the total allowable production from the lease as a whole will be 90 barrels. The pipe lines and purchasing companies are hereby directed to observe and enforce this regulation in said "Class A" pools and to assist the Umpire and Operators' Committee in carrying out the requirements hereof.

10

Class B Pools: The following semi-flush pools shall be placed in "Class B", to-wit: Allen (Wilcox), Allen (Cromwell), Bowlegs, Earlsboro (proper), Earlsboro Townsite, Little River, East Little River, Marshall-Lovell, Maud, Mission, Sasakwa, Searight, Seminole, East Seminole and St. Louis.

These pools shall be curtailed in the following manner: Allowed production, 50% of potential production with this qualification—that in the case of any lease not capable of making in excess of 50 barrels per day, it shall be allowed an exemption of 10 barrels per well per day and the curtailment of 50% shall only be applied to the excess over an average per well of 10 barrels per day.

11

Class C Pools: The following pools shall be placed in "Class C", to-wit: Carr City pool with its new extension and South Earlsboro pool. These pools, to recognize the market outlet and to conform to the peculiar conditions

therein shall be curtailed according to the following schedule:

Average barrels per well per lease:

300 barrels or more, allowed production	25%	
200 to 300 barrels, " " "	30%	not over 75 Bbls.
100 to 200 " " "	37½%	" " 60 "
Less than 100 bbls, " "	50%	

Also, in these pools where a lease is not capable of making more than 50 barrels per day, there shall be allowed an exemption of 10 barrels per well per day as in "Class B".

[fol. 207] 12

Class D Pools: Konawa Pool. There being no other pool in the State in similar position to that of Konawa, it is placed in a class by itself and shall be prorated on the following schedule:

Average barrels per well per lease:

400 barrels or more, allowed production	18¾%	
300 to 400 barrels, " "	22½%	not over 75 bbls.
200 to 300 " " "	26¼%	" " 67 "
100 to 200 " " "	37½%	" " 53 "
Less than 100 barrels, " "	50%	

Also, in this pool, leases not capable of making over 50 barrels per day shall be granted an exemption of 10 barrels per well per day as in "Class B".

13

Class E Pools: East Earlsboro, West Asher-Wanette, West Seminole (29-9-6), and Wewoka (Section 30 and Townsite). Owing to the changing relation between the potential production and the market outlet from these pools, it is ordered that each of them be limited in production to a stated figure representing the present market outlet which, in the case of the East Earlsboro pool, is 15,000 barrels per day, and in the case of the West Asher-Wanette pool is 7,200 barrels per day, and in the case of the West Seminole (20-9-6) pool is 3,000 barrels per day, and in the case of the Wewoka (Section 30 and Townsite) pool is 4,000 barrels per day. And that the Umpire and Operators' Committee be required to ascertain and compute from time to time the percentage of potential production

which may be allowed to conform the permitted production to the market outlet and to report the same to the Corporation Commission as the basis for an ancillary order. But in these pools the 10 barrel per well exemption in leases not capable of making in excess of 50 barrels per day shall apply as in "Class B".

14

Class F Pools: Tatums and Chandler Pools. Both of these pools have new extensions with potentially large wells along with old, small wells. Having in view the present market outlet from these pools, it is ordered that they be curtailed in the following manner:

Wells with a potential daily production of 400 barrels or more shall be allowed 100 barrels daily. Wells with a daily potential of from 100 barrels to 400 barrels shall be allowed 50 barrels per day. Wells with a daily potential production of less than 100 barrels shall be allowed an exemption of 10 barrels per day and be curtailed 50% of the excess over 10 barrels.

Provided: That the Umpire and Operators' Committee shall from time to time, make a survey of the market outlet from each of said pools and in case the market demand increases, this fact, together with suggested changes in the percentage of allowable production, shall be reported to the Commission as the basis for an ancillary order.

[fol. 208] 15

Class G Pools: West Perry, Orlando and Township 20 North, Range 4 West. These new pools of unascertained possibilities are now being curtailed on the basis of the following maximum allowed output which shall be continued until otherwise ordered by the Commission, to-wit:

West Perry	600 barrels daily.
Orlando	400 " "
Twp. 20 R., 4W	400 " "

16

Class H Pools: The Oklahoma City pool. The Corporation Commission temporarily nominates for the Oklahoma City pool an outlet of 85,000 barrels per day in January, 1931, 90,000 barrels per day in February and 90,000 barrels

per day in March. This nomination of the total permitted production of the pool shall serve as a basis for fixing the proportional production of the wells in said pool until the Commission finds from evidence that a greater or less reasonable market demand obtains. On the basis of the potential production of the field now reported to the Commission of 5,388,298 barrels per day, the temporarily nominated outlet of 85,000 barrels per day will require a proportional taking of 1½% from the potential production of each well or lease. This percentage shall be put in effect at 7 A. M. January 3, 1931, but the Umpire and Operators' Committee are directed to immediately begin the taking of gauges in said field according to the supplemental order this day issued and to compute the percentage of allowable from time to time as found necessary to conform the permitted production to the reasonable market demand, and to report as soon as possible their findings to the Commission as a basis for an ancillary order revising such permitted percentage. Any person interested in said pool may also report to the Commission any evidence of the need for a changed percentage. All orders heretofore issued applicable to the Oklahoma City pool, and now in force and effect, are hereby extended in full force and effect until 7:00 A. M. January 3, 1931. From and after said date and hour the percentage of allowable production herein fixed for the Oklahoma City pool shall be applied according to and as modified by Order No. 5413 this day issued which applies to the Oklahoma City pool alone.

It is further ordered that whatever reasonable market demand from the pool shall exist at any time shall be prorated and allocated among all the producing wells and leases, so that each well or lease shall receive its prorata share of the reasonable market demand, and the pipeline companies are hereby directed to cooperate with the Umpire in so arranging pipeline connections that there shall be no discrimination in favor of one producer and against another.

17

The Commission will, in separate order, name for the various pools embraced within the terms and provisions of this Order, Operators' Committees for each of said respective pools and territories embraced herein. This will be

necessary for the reason that the law requires the approval of His Excellency, the Governor of the State of Oklahoma, in the appointment and designation of such officials. [fol. 209] The Order #5369 of October 28, 1930, shall be continued in force for the period Jaunary 1, 1931, to and including March 31, 1931, except as modified by this and other supplemental and ancillary orders of the Commission. Jurisdiction of this cause is hereby retained by the Corporation Commission, and notice is hereby given that supplemental and ancillary orders may be made herein from time to time as required by new developments and as instructions to the Umpire and Operators' Committee. When in the judgment of the Umpire or any Operators' Committee any adjustment or fixing of percentages of well production as provided in this order shall be proper, or as any such supplemental or ancillary order shall become necessary, the facts supporting the necessity therefor and the reasonableness thereof shall be reported to the Commission for approval, and no exception to those rules and regulations shall be allowed by the Umpire or Operators' Committee, nor shall any adjustment of percentages or well production become effective, unless approved by such an ancillary order of this Commission. Should the demand for crude oil from the State of Oklahoma increase prior to March 31, 1931, to such an extent as to permit a greater outlet from the pools herein mentioned, the Umpire shall report the facts to the Commission, together with the recommended percentages, and the Corporation Commission hereby gives notice that such revised percentages may be substituted for the percentages provided for in this order.

Done at Oklahoma City this the 30 day of December, 1930.

Corporation Commission of Oklahoma. —— ——, Chairman. Fred Capshaw, Commissioner. E. R. Hughes, Commissioner.

Attest: E. D. Hicks, Jr., Secretary.

[fol. 210] The verified Answer of Defendants to Second Amended and Supplemental Bill of Complaint was introduced by the defendants-appellees as an affidavit on their behalf. Reference is here made to said answer for its contents.

[fol. 211] The affidavit of Ray M. Collins, introduced on behalf of the defendants-appellees, states:

1

That he is a citizen of the State of Oklahoma and a resident of Tulsa County in said State, and that he is the Ray M. Collins mentioned by the Champlin Refining Company in its Second Amended Bill of Complaint in the above entitled cause, and that he is and has been for more than two years last past the Umpire appointed and re-appointed by the Corporation Commission to attend to the administrative details of enforcing the curtailment and proration orders made and promulgated by said Corporation Commission from time to time for the purpose of preventing waste of crude oil and petroleum in the State of Oklahoma. That he is the Umpire who was appointed to execute the orders of the Corporation Commission involved in said above entitled cause and numbered 5189, 5246, 5292 and 5369 and other orders supplemental thereto, and is still serving in said capacity.

2

Affiant further says that he has been a producer of crude oil in the State of Oklahoma for the past twenty-five (25) years, and that he has had personal and direct charge of drilling for and producing crude oil in said State, and, as such producer, is well acquainted with the art and science of drilling for and producing crude oil in all of the oil fields in Oklahoma including the Oklahoma City pool and the Greater Seminole Area. That affiant further says that he is not personally interested in the production of crude oil or gas or in the transportation or marketing thereof in or from any of the oil wells in the State of Oklahoma, production from which is now or heretofore has been curtailed by the orders of the Corporation Commission above referred to but is only interested in a few very small, old wells of a class excluded from curtailment by orders of the Commission for reasons therein stated and affiant therefore states that he is not interested in any of the prorated fields in the State.

Affiant further states that, as such Umpire, he has always officiated directly and solely by reason of his appointment as such Umpire by the Corporation Commission and in pursuance of the orders of said Commission and not as agent of any oil operator or group of oil operators functioning or attempting to function in the proration or curtailment of oil fields in any other manner than under and by virtue of the authority of the orders of said Commission. Affiant further states that he is well acquainted with Otto B. Bradford and with the members of each of the Operators' Committees which have functioned in the curtailment and proration of oil pools in Oklahoma, as named and mentioned in the Second Amended Complaint of the Champlin Refining Company, and that he knows the manner of their appointment and states the fact to be that each and all of them were appointed by the Corporation Commission by orders duly entered by said Commission in its records, including the said Otto B. Bradford, who was also appointed by this affiant as his assistant in the Oklahoma [fol. 212] City field by and with the consent of the said Corporation Commission. Affiant further states that the said Operators' Committees served without compensation and were appointed by the Corporation Commission because of their well known ability and peculiar fitness as advisors to the Umpires and to the Corporation Commission in the execution of the conservation orders, and not because they were affiliated or employed by any particular oil producing company. That neither this affiant nor the said Otto B. Bradford was at the time of appointment as Umpire employed by any of the persons, firms or corporations named in the complainant's Complaint, nor by any other oil producing concern interested in any of the said prorated fields, nor was either of said Umpires so employed immediately prior to their appointment, or since their appointment, but have derived their compensation as such Umpire solely from a common fund voluntarily created by the operators interested in the flush and semi-flush pools under proration and duly apportioned or assessed proportionately upon all of the operators interested in said prorated fields according to production, and that this was done because there were no available state funds with which said Umpires could be paid.

4

Affiant further states that he was present at the great majority of all meetings held by operators called to consider the proration of said fields, and was present at each of the hearings before the Corporation Commission which resulted in the promulgation by the Commission of the orders involved in this suit and that, furthermore, he is familiar with the manner and method by which the orders of the Commission were drawn, and states that none of said orders was drawn by the agents, employes or servants of the competitors of the Champlin Refining Company, but affiant states that said orders and each of them were drawn by counsel for the petitioner who filed the petitions before the Corporation Commission upon which said hearings were held, and by the attorney for the Corporation Commission, and that said counsel, at the conclusion of the evidence in each of said hearings, submitted a draft of a proposed order to the Corporation Commission, in open court, as a suggested journal entry of the order to be then made by the Commission based upon the evidence adduced at the hearing, and that thereafter said orders, as amended by the Corporation Commission, were promulgated by the Commission as its orders and rules and regulations in each instance.

5

Affiant further states that he heard the evidence presented upon which each of said orders was based, and that he is familiar with the facts and circumstances of their issuance and enforcement, and states that each of said orders and rules and regulations therein contained were designed and intended to prevent the waste of crude oil and petroleum in the oil pools of the State of Oklahoma, including the Oklahoma City pool and the Greater Seminole Area, and to protect the co-equal rights of the producers in each pool, and were not designed or promulgated for the purpose of fixing prices of petroleum. That during the four years last past curtailment and proration have been in effect in Oklahoma and for nearly all of said time under orders of the Corporation Commission, and during said period the price of crude oil in Oklahoma, responsively to world conditions, has declined approximately 50% from its former level.

Affiant further states that he was familiar with the operating conditions in the Oklahoma City pool and the Greater Seminole area and other prorated pools of the State immediately prior to the issuance of the Order No. 5189 on June 30, 1930. That it was the duty of this affiant and the said Otto B. Bradford, in their respective fields, to superintend the taking of the gauges of the wells and to observe and record the results of the open flow tests provided for in the orders of the Corporation Commission in force prior to the order of June 30, 1930, and since said time, and this affiant says that, on said June 30th, the potential production from the wells in the Oklahoma City field then in existence and which had been tested and which would then be permitted to produce under the orders of the Corporation Commission, aggregated 600,000 barrels per day; that at said time the physical pipeline outlet from the said field did not exceed 160,000 barrels per day, and the total market outlet from the field, that is, the amount which purchasers would purchase from said field, including the amounts which the producers themselves sought to take and use, did not exceed 100,000 barrels per day; that, therefore, had no order been made curtailing the output from said field and enforcing proportional taking, but all of the wells had been permitted to produce to capacity, such production would have far exceeded all transportation and marketing facilities and reasonable market demands, and, by reason of the absence of adequate storage facilities much of said oil, under said circumstances, would necessarily have gone into open earthen storage where it would have been physically wasted through evaporation, leakage and overflow, and many oil properties without pipeline or market outlet would have been drained by others possessing such outlets. That in the Greater Seminole Area at said time, the potential production of all the wells then completed and ready to produce aggregated 486,945 barrels, and the total market demand from said area aggregated 252,962 barrels, and that if there had been no curtailment or proration of production from said Greater Seminole Area, waste incident to the production of oil in excess of the reasonable market

demands from said pool would have occurred, including that arising from open earthen storage, and the co-equal rights of the producers in the oil and the common gas pressure would have been violated, and that a similar condition of excess of potential production over market demand and danger to the co-equal rights of producers existed at said time and still exists in each of the pools included in the orders of June 30, 1930; July 24, 1930; August 30, 1930; October 28, 1930, and in other orders ancillary and supplemental thereto.

Affiant further states that he was familiar with the operating conditions in the Oklahoma City pool and the Greater Seminole area and other prorated pools of the state immediately prior to the issuance of the Order No. 5369, on October 28, 1930, and orders supplemental thereto. That it was the duty of this affiant and the said Otto B. Bradford, in their respective fields, to superintend the taking of the gauges of the wells and to observe and record the results of the open flow tests provided for in the orders of the Corporation Commission in force prior to the order of October 28, 1930, and this affiant says that, on said October 28th, the potential production from the wells in the Oklahoma City field then in existence and which had been tested and which would then be permitted to produce under the orders of the Corporation Commission, aggregated approximately 2,800,000 barrels per day, [fol. 214] that at said time the physical pipeline outlet from the said field did not exceed 160,000 barrels per day, and the total market outlet from the field, that is, the amount which purchasers would purchase from said field, including the amounts which the producers themselves sought to take and use, did not exceed 132,000 barrels per day; that, therefore, had no order been made curtailing the output from said field and enforcing proportional taking, but all of the wells had been permitted to produce to capacity, such production would have far exceeded all transportation and marketing facilities and reasonable market demands, and, by reason of the absence of adequate storage facilities much of said oil, under said circumstances, would necessarily have gone into open earthen storage where it would have been physically wasted through evaporation, leakage and overflow, and by reason

of disproportionate operation of wells in said field, much otherwise recoverable oil would have been wasted by being left unrecoverable in the underground reservoir. That, in the Greater Seminole area at said time, the potential production of all the wells then completed and ready to produce aggregated 520,248 barrels, and the total market demand from said area aggregated only 195,040 barrels, and that if there had been no curtailment or proration of production from said Greater Seminole area and other pools mentioned in said order, waste incident to the production of oil in excess of the reasonable market demands from said pools would have occurred, including that arising from open earthen storage as well as underground waste and a disproportionate use of the common gas pressure, and that a condition of excess of potential production over reasonable market demand existed at said time and still exists in each of the pools included in the orders of June 30, July 24, 1930, August 30, 1930, October 28, 1930, and orders supplemental thereto, and that proration was necessary to protect the co-equal rights of producers therein.

7

Affiant further states that preceding the issuance of each of said orders there was filed before the Corporation Commission a verified petition by a resident producer of oil in the State of Oklahoma, setting forth the facts of overproduction and threatened waste in the oil pools of said State and praying that a hearing be granted and that the order, rules and regulations of the Corporation Commission be formulated and promulgated for the prevention of such wastes and the protection of the co-equal rights of the producers; that in each such instance, said petition was set for hearing by the Corporation Commission and notice given by publication and by personal service, setting the time and place of such hearing and that the notice was issued and published and personally served five days prior to each of said hearings; that at such hearings evidence was taken and an opportunity afforded to any one interested to protest and to offer evidence and that at said hearings proof of publication and service of said notice was made and thereafter the orders referred to were issued by the Corporation Commission.

Affiant further states that at the time of the issuance of the Order No. 5189 on June 30, 1930, the potential production of crude oil in the United States from wells then in existence was in excess of 4,730,000 barrels per day and that imports of crude oil and refined petroleum then currently amounted to some 300,000 barrels per day, thus creating, in addition to stored oil, a current supply totaling 5,030,000 barrels per day as against an approximate [fol. 215] daily demand for domestic use and export of 2,840,000 barrels per day. That at said time there was in storage in the United States crude and refined petroleum in the amount of 698,000,000 barrels which stocks were excessive and beyond the needs of the petroleum industry and by reason of said fact, the purchasers of oil were unwilling to purchase oil in Oklahoma for storage or otherwise in excess of their current requirements. That such an overproduction and excessive storage and the consequent disinclination to purchase for storage aforesaid still continues. That at said time the potential production from the wells in Oklahoma then ready to produce was approximately 1,362,000 barrels per day and the total demand from Oklahoma did not exceed 650,000 barrels per day; that the excess of potential production over consumption from the State of Oklahoma was 712,000 barrels per day for which excess there was no market outlet and no adequate storage facilities, and if said excess should then have been produced, it would necessarily have gone into open, earthen storage in large amounts. That at the time of the issuance of Order No. 5246 on July 24, 1930, the potential production from the State of Oklahoma had increased to 1,400,523 barrels per day, while the market demand from said State had decreased to 500,000 barrels per day, leaving an excess of potential production over market demand of 850,523 barrels per day for which there was no market outlet and no adequate storage facilities and if said excess had been permitted to be produced, it would have unavoidably — into open, earthen storage in large amounts; that on August 30, 1930, when said Order No. 5292 was promulgated, the potential production of crude oil in the State of Oklahoma was 1,481,118 barrels

per day, while the market demand from said state at said time was only 500,000 barrels per day, thus leaving an excess of potential production over market demand of 931,118 barrels per day, for which there was no market outlet and no adequate storage facilities, and if said excess had been permitted to be produced it would have unavoidably gone into open, earthen storage in large amounts. That on October 28, 1930, when Order No. 5369 was issued the potential production from Oklahoma had increased to 3,638,478 barrels per day while the reasonable market demand from said state had remained at 550,000 barrels per day, leaving an excess of potential production over market demand of 3,088,478 barrels for which excess there was no market outlet and no adequate storage facilities, and if said excess had been permitted to be produced it would have unavoidably gone into open, earthen storage in large amounts. That at the present time the potential production from the wells in Oklahoma is approximately 6,000,000 barrels per day and the total market demand is approximately 465,000 barrels per day; that the excess of potential production over market demand is approximately 5,535,000 barrels per day for which excess there is no market outlet and no adequate storage facilities, and if said excess is permitted to be produced it will unavoidably go into open, earthen storage in large amounts. That open, earthen storage involves a serious and definite physical waste of crude oil.

9

Affiant states that the usual and customary method of gathering and marketing crude oil from the oil pools of Oklahoma and elsewhere in this country and including the Oklahoma City pool and the Greater Seminole Area is and at all times herein mentioned has been as follows:

[fol. 216] Purchasing companies buying for their own account or for account of others make arrangements with producers of oil to take the oil from their wells and to pay for same at the mouth of the well the prevailing market price as posted or offered from time to time by the principal purchasers for that grade and quality of oil. Authority to take such oil is evidenced by what is termed a "division

order'' setting forth the terms of the arrangement and the respective interests of the persons owning the production. Companies engaged exclusively in gathering and transporting oil by pipeline extend their systems into such pools as have a market demand for the oil and connect to all of the wells whose owners desire a connection and who have a market outlet for their oil. These pipeline systems or companies are common carriers and do not themselves purchase oil but will gather and transport it for any producer or purchaser who has a place to deliver it on the line and who will tender it in amounts and according to rules and regulations and tariffs in effect. Interstate carriers are under supervision of the Interstate Commerce Commission as to tariffs and rules and regulations. Intrastate carriers are under state supervision. Seven great pipeline systems enter the Oklahoma City field and offer their services to any and all producers and purchasers and a similar number, although not of the same identity in every instance, enter and serve the Greater Seminole Area. In addition there are smaller and more local pipelines serving each of said pools or fields. These several pipeline systems, in addition to reaching local markets, reach all of the principal markets for crude oil, north, south and east of said pools and some of them extend to the Gulf of Mexico and to the Great Lakes and, with connections, reach the Atlantic Coast. Each and every producer in said pools including the Champlin Refining Company, Oils Incorporated, Marco Petroleum Company, Century Petroleum Company and the Capital Producing and Refining Company, who, in this proceeding, have alleged that they have demands or offers to buy their oil, are at liberty to use said pipeline systems and/or any other available transportation facility, and to transport to any purchaser or point of delivery their respective ratable proportions of the reasonable market demand for oil in said fields.

The power of the Corporation Commission and the activities of this affiant are exerted to prevent the production of oil in excess of either transportation or marketing facilities or reasonable market demand, in order to prevent waste incident to any such excess production. No effort has been made to limit the reasonable market demand or to

limit production below the reasonable market demand. It was intended by each order of the Corporation Commission that if the reasonable market demand for the oil in any field should increase at any time this fact was to be reported to the Commission so that the new and additional market demand could be recognized and allowed by a revision of the percentages of potential production to increase the allowable output accordingly, so that all the producers in such field could enjoy the right to participate on a ratable basis in such increase.

Offers to purchase which are made to individual producers in any of said fields for amounts in excess of the permitted production from the wells of such producers should not be recognized by the Commission because same cannot be prorated or distributed prorata among all the producers in the field and the only effect of recognizing them would be to permit the offeree to produce his or its wells out of proportion or to a greater percentage of capacity than others, and thus injure their neighbors by drainage and disproportionage use of the gas pressure and defeat the intent and purpose of the Conservation Statute. [fol. 217] Also, it is characteristic of large new flush pools that one or several local refiners such as the complainants herein will drill one or more wells on small tracts and run a private pipeline to such well or wells and then demand the privilege of producing their well or wells to capacity while others are curtailed, because, as they allege, they need the oil for their refinery and will not physically waste their oil. Although there is an abundance of oil available for purchase they assert that as refiners and marketers of refined oils they are entitled, as an aid to their refining business, to disregard proration as producers and to produce their wells to capacity notwithstanding the fact that such action on their part will result in drainage of neighboring properties or force adjoining owners to flow their oil into earthen storage to avoid drainage.

The facts in this paragraph set forth constitute a true description of the Oklahoma City field and its surroundings as they now exist and as they have existed during the time the orders complained of were in effect.

Affiant further states that the gas pressure in the Oklahoma City pool is very great and for this reason should the complainants to this and companion cases be permitted by

injunction of this court to flow their wells during the pendency of this and companion cases, the damage to other producers and to the pool as a whole through drainage, dissipation of gas pressure and waste would be immeasurably greater than any injury that could possibly happen to complainants in this and companion cases from obeying the orders of the Commission along with other operators pending the final decision in said cases. The effect of an injunction against enforcement of the orders as to complainants would be to give them an unconscionable advantage over other producers in the same pool in that the complainants would be thus enabled to draw hundreds of thousands of barrels of crude oil from under the leases and lands of adjoining and adjacent owners and to convert the same to the use of complainants to the irreparable damage and injury of said other producers. That the proceeds of the amounts of oil which complainants could thus drain from their neighbors would pay all fines and penalties which could be assessed under the laws of Oklahoma for violation of the orders and would leave complainants a large profit.

10

Affiant further states that the curtailment of production, as applied by said orders in each of the pools covered thereby, applies equally to each of the producers in each of said pools, respectively, so that no advantage is given by the operation of the plan of conservation to any one operator over another. And that the rules and regulations and their enforcement are designed to prevent unfair advantage to one operator over another and to prevent drainage from one oil property to another, to prevent underground waste of oil and to prevent injury by water encroachment or otherwise.

Affiant further states that he is familiar with the experience of the operators in the Oklahoma City pool and in the Greater Seminole area under said orders and that according to said experience, extending over a year in the Oklahoma City fields and other three years in the Greater Seminole area, there is no evidence that the wells, which have been subjected to curtailment either by temporary shutting down or by pinching in, have suffered damage. [fol. 218] That with reference to water encroachment,

affiant states, that temporarily shutting down or pinching in of the wells in said oil pools does not cause water encroachment but that water encroachment is more certain to occur and will sooner occur where the wells are permitted to flow to capacity continuously and for a considerable length of time, and affiant says, it is his opinion based upon his knowledge of the facts and experience that the wells of the Champlin Refining Company in the Oklahoma City pool and in the Greater Seminole area and those of the Marco Oil & Royalty Corporation, the Century Petroleum Corporation, Capitol Refining Company, and the Oils Incorporated have not been damaged by the enforcement of the orders of the Corporation Commission and that they will not be damaged by a continuance of the application of said orders or similar regulations so long as said wells are treated and curtailed in the same manner as other wells in the pools in which they are respectively located.

11

Affiant states that the duties of the said Umpires and of the Operators' Committees in executing the said orders of the Corporation Commission were and are ministerial only, and that neither the said Umpires nor the said Operators' Committees made or attempted to make any rules or regulations or orders for the curtailment of the production from any of the wells in any of said pools, nor were said Umpires and Operators' Committees vested with any discretion, but that the manner in which said orders of the Commission were executed was as follows, to-wit: The said Umpires and Operators' Committee- observed the operation of the wells in each of the pools, said Umpires superintended the taking of gauges and recorded the results of open flow tests, and advised the operators, from time to time, of the contents and requirements of the orders of the Commission and if any operator failed or refused to comply with said orders, the said Umpires reported the name of such operator, and the facts attending his violation of the order, to the Corporation Commission for action by the Commission itself. That by said orders the said Umpires and Operators' Committees were expressly forbidden to change any of the provisions of the orders, rules and regulations but were required to report to the Commission any change of conditions within any pool which, in the

opinion of the said Umpires, might require a modification of the order or a change in the percentages of potential production allowed in any of said pools. Affiant further states that with reference to the fixing of any percentage of potential in any pool, the duty of the Umpires and Operators' Committees consisted solely in making a mathematical calculation of the known market outlet in said pools and the known potential production of the wells, from which two factors it required only a mathematical calculation to ascertain the percentage of potential production that each well in the pool would be permitted to produce in order that the total production from the pool should equal the market demand from said pool; and when such mathematical calculations were made by the said agents, Umpires and Operators' Committees, they were reported by said Umpires in each instance to the Corporation Commission, which Commission thereupon, and upon consideration of the evidence, made and issued its supplemental or ancillary order requiring the enforcement of such percentage.

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Affiant further states that, under said orders of the Corporation Commission, the Champlin Refining Company and [fol. 219] the other companies named in paragraph 10 of this affidavit, had not been required to shut down their wells except for limited periods and under the same conditions and for the same periods of time that other producers in the same pool or pools were required to shut down. That under the orders as applied to the Oklahoma City field, each new well, on being completed, is required to shut down for a period of fifty-seven (57) days, and that the reason for this rule is as follows, to-wit: That the Oklahoma City pool as a whole has been curtailed and prorated since about the 15th day of September, 1929, at which time the wells then in existence were all completely shut down for thirty (30) days by voluntary action of the operators; that at the conclusion of said period of voluntary shut-down, and from and after November 1, 1929, the said pool was curtailed and prorated, under orders of the Commission, upon what is known as the "time" basis, whereby the wells were divided into classes and each class was permitted to produce for a certain length of time, and was then required to shut down while another class produced for an equal length of time.

This arrangement was necessary by reason of the fact that, if all the wells in the pool had produced at the same time, the pipeline, transportation and marketing facilities would have been wholly inadequate to take care of and handle the production. During the time from January 1, 1930, each well has been required to shut down fifty-seven (57) days upon completion. In this manner the wells in the Oklahoma City pool which preceded in point of time the wells of the said named companies, have an accumulated shut-in time ranging from 57 days to over 200 days each and, under the existing orders, the wells of the said named companies must likewise shut down for 57 days in consideration of the time their competitors' wells have been shut down. Affiant states that the said companies having only recently completed their respective wells in the Oklahoma City field, are the beneficiaries of the shut down requirement rather than its victims, because if all of the wells in the Oklahoma City pool which preceded them during the past year had been permitted to produce continuously and to capacity, they would have depleted the gas pressure and drained the oil out from under the leases of said companies to a vastly greater extent than has occurred under the orders of the Commission. This is especially true since the wells of said companies are located on small town lots.

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Affiant further states that in the making of the rules and regulations contained in their orders, the Corporation Commission classified the oil pools of the State of Oklahoma and applied percentages of curtailment in the flush and semi-flush pools upon the basis of the relation between the market outlet and the potential production in each pool. That this necessarily caused different or varying percentages of curtailment to be applied to the various pools because the relation between the market demand and the potential production was not the same in each of said pools and, if the Commission had applied the same or uniform percentage of curtailment in all of the prorated pools, it would have resulted in the production of some of the pools being cut down far below their natural and actual and reasonable market demand, so that persons desiring to purchase oil from said pools would have been denied and prevented from

so doing, while in the case of other pools, the amount of production allowed by such uniform percentage would have been far in excess of the market outlet from said pools and waste would have occurred. The various pipelines in the State of Oklahoma do not all connect with all of the oil pools, nor do all of the purchasers of crude oil in Oklahoma [fol. 220] desire to purchase crude oil from all of the oil pools. Some of the purchasers and pipelines have no pipeline connections or other transportation facilities in the Oklahoma City pool or in the Greater Seminole area and that, therefore, the market outlet of each pool is to a certain extent local.

Affiant further states that there are certain oil settled oil pools in the State of Oklahoma which prior to the order of October 28, 1930, were not included in curtailment orders of the Corporation Commission but in which pools the wells were permitted to produce to 100% of their capacity. That with reference to said old pools not curtailed prior to October 28, 1930, the Corporation Commission found in its orders, and affiant states the fact to be, that said pools and each of them had, at the time of the issuance of said previous orders, adequate pipeline and market outlets equal to the potential production of said pools and each of them, and that waste of crude oil was not then imminent in said pools; that also, in said unprorated pools there were some 60,000 old, small wells scattered over the state and in such a situation as to present great difficulty of administration of any curtailment plan that might be applied to them. Affiant further states that the majority of said wells are so small that to curtail their production would be to reduce their gross income below the cost of operation and thus probably to compel their abandonment and their loss as a natural resource. That the average production of said 60,000 old, small wells was and is only approximately four (4) barrels per well per day, and that in the case of 30,000 of them, their average is only about one (1) barrel or less per day, as contrasted with the daily average production per well in the flush and semi-flush pools of approximately 400 barrels per day and ranging in the case of some wells, up to 90,000 barrels per day. That for these reasons the Corporation Commission excluded small wells from proration in its orders prior to that of October 28, 1930. But

affiant states that in and by its order of October 28, 1930, said Commission found from evidence introduced before it in the hearing upon which it based said order, that by reason of a readjustment of purchases on the part of purchasers of crude oil in said state as between the pools therein not previously prorated and the Oklahoma City pool, the potential production of said previously unprorated pools would exceed the reasonable market demand for oil produced therein, and that it became necessary to prorate said older pools in order to prevent the waste of crude oil therein, and that said older pools which were designated in said order as "Class A" pools were curtailed in their production to the extent of fifty per cent of the excess, in the case of each lease, over and above an average of five barrels per well per day; and that this was done for the further reason that the Commission desired to avoid discrimination as between said Class A pools themselves and as between said Class A pools and the other pools of the state. That in supplemental orders the Commission has raised the exemption in Class A pools from five barrels per well per day to ten barrels per well per day to avoid possible injury to said old small wells an account of water conditions.

Affiant further states that oil and gas are irreplaceable natural resources of the state and while in the ground possess the power of self-transmission by reason of the gas energy which exerts a pressure common to the pool. Any dissipation of the gas pressure or disproportionate use thereof by one operator correspondingly reduces the ability of the remaining producers in the pool to recover their proportionate part of the oil deposit and affiant states that in the case of any pool where the potential production is in excess of the market demand, it is necessary in order to [fol. 221] protect the co-equal rights of all of the producers to extract their proportionate share from the pool, to place upon all of such producers a uniform percentage limitation upon the production of their wells. In other words, where in such a pool some of the operators have pipeline outlets of their own and others do not, unrestrained production by the possessors of the pipeline outlets would lead to drainage by them from producers not so fortunately situated or would compel said less fortunately situated producers to flow their wells into earthen storage or other-

wise commit the waste now prohibited by law. Furthermore, unrestrained production by some operators of their own wells, while the remaining operators who have no pipeline outlet of their own for their oil, keep their wells restrained to their respective shares of the oil taken from the field by common purchasers of oil, would result in the dissipation by the former of the gas energy in the underground reservoir and hence in underground waste of oil which would otherwise be recoverable.

Affiant states that in the enactment of said act effective February 11, 1951, recited in complainant's bill, the Legislature of Oklahoma was dealing not only with a natural irreplaceable resource, but also with a peculiar species of property of vast importance and consequence to the State of Oklahoma as a proprietor and to the economic welfare of the people of said state. Affiant states that oil and gas underground possess characteristics not shared by any other species of property. That the typical oil reservoir in the State of Oklahoma and in the other American states, including the Oklahoma City oil pool and the Greater Seminole oil area, is characterized by the following conditions: (1) Oil and gas exist in the ground in sedimentary rocks, being a porous, sandy strata, or in lime formations, varying in texture and porosity, and these are called oil pools. (2) They exist in their undisturbed state under pressures, often quite high. (3) In said pools both oil and natural gas will be encountered as the occupants of the same reservoir. (4) There will be a quantity of free gas inhabiting the higher portions of the saturated formation, such gas being almost entirely if not completely disassociated from the oil content of said formation, but exerting a pressure throughout the same. (5) In addition to said free gas, large quantities of natural gas will be found in the reservoir dissolved in the oil contained therein, which association between the oil and gas reduces the viscosity of the oil and otherwise tends to increase its mobility so that when the reservoir is penetrated by a well the propensity of the oil to migrate to the opening thus created and to be lifted to the surface is vastly augmented, and as a result of this physical condition oil may be drained from the lands of one oil operator through the well or wells of another operator penetrating the common reservoir. (6) Furthermore, upon the pene-

tration of the reservoir by a well the free gas at the top of the structure functions in such way as to drain the oil originally inhabiting one tract of land to the tract penetrated by the well. (7) The free gas at the top of an oil structure and the gas dissolved in the oil therein constitute what in the oil industry is defined as the "gas energy" of the particular pool, and the gas energy of an oil pool is the chief agency in moving petroleum laterally to a well penetrating the reservoir, and also in lifting it to the surface for recovery for commercial purposes.

That the characteristics of oil and gas hereinbefore mentioned apply to all the oil properties described in complainant's bill, and the pools wherein they are situated. That these characteristics establish a community of interest in the gas energy or pressure of an oil pool between and [fol. 222] among all of the proprietors having rightful access to the particular reservoir, by reason of the fact that should one oil operator therein wastefully or inefficiently or disproportionately use said gas energy or pressure to produce his oil, such use to the extent of such waste or that it is improper, deprives the other oil operators in said pool of the right to recover the quantity of oil from their lands which they might recover if there were no such waste of gas energy or pressure or no inefficient or disproportionate use of the same. Accordingly, the nature of the subject matter dealt with correlative rights and obligations apply to any oil and gas pool. No operator therein should disproportionately use the gas pressure or energy of the pool so as to take from the pool a disproportionate part of the oil content thereof. At the time of the making of the orders referred to, the potential production of the Oklahoma City pool, the Greater Seminole area and the other areas affected by said orders, greatly exceeded in each case, the market outlet from each pool respectively, as is shown on the faces of said orders. The facts last stated demonstrate that it is not possible to market all of the oil production from any of said pools, and particularly from the Oklahoma City pool or from the Greater Seminole area. Complainant states that it is in position to take all of its production both from the Oklahoma City pool and from the Greater Seminole area, but affiant states that not all of the oil operators therein are able to market all of their

production therefrom but only a part thereof, and in the Oklahoma City pool a very small part thereof, and that if complainant shall be permitted to take all of its production from said pools, such action on its part would destroy the community nature of the gas energy in said pools, and in so doing the complainant will be able to produce more than its proportional share of the production from said pools to the destruction of the property rights of the other operators in said pools, and will cause waste; if the complainant shall be permitted to do one of the things designed to be prevented by the statute received in complainant's bill, that is to say, instead of submitting to a proportional taking of oil from each of said pools, each operator thereby being permitted to produce such proportion of the market outlet of the pool as his potential production bears to the potential production of the pool, complainant would be permitted to produce all of its oil to the irreparable detriment of the other operators in each of said pools, by drainnig the oil from their properties and causing them to commit waste by flowing their oil into open, earthen storage because of inadequate market outlets for their oil; or if they failed so to do then complainants would commit waste by its dissipation of the gas energy in the pool for that therefrom great underground waste would result. The said statute was designed to prevent both the evil of the commission of waste and the evil of disproportionate taking on the part of the several operators in a common pool, and thus to prevent the consequences above enumerated growing out of permitting the complainant herein to produce without restraint the oil from its wells in the said pools where there is a grossly inadequate market outlet.

Affiant states that the said act was adopted by the Legislature of Oklahoma in order not only to prevent the waste of crude oil under ordinary circumstances, but also to prevent its waste incident to the production of crude oil in excess of transportation and marketing facilities or reasonable market demands, and affiant states that as is above explained, actual waste of crude oil occurs as an incident to the production of crude oil in excess of transportation or marketing facilities or reasonable market demands, and that additionally, and as an incident to the prevention of [fol. 223] waste under the said circumstances, said statute

had as one of its purposes the protection of the co-equal rights of the several land owners in a common source of supply of crude oil against the taking by any one thereof of an unfair and disproportionate part of the oil content in such common source of supply. In this connection, affiant states that prior to the enactment of said statute and its approval on February 11, 1915, as at all times since its enactment, there were and have been three classes of oil operators in the State of Oklahoma, namely: First, the completely integrated unit which produced, transported, and refined petroleum and marketed the products thereof; Secondly, the quasi-integrated unit which produced, transported and marketed crude petroleum; Thirdly, the unintegrated unit which engaged in the sole business of producing oil. Affiant states that in the years 1905, 1906 and 1907, the Glen Pool in Oklahoma was under active exploitation, and that the three classes of oil operators held producing leases therein; that the integrated and quasi-integrated units produced all the oil that they could produce from their properties, and that the unintegrated oil operators owning production alone, and having no actual market for all their output, were totally unable to produce all of their potential production from said pool. In consequence, by virtue of the nature of the substances involved, the integrated and quasi-integrated units in the oil producing business used more of the gas energy and pressure of the pool than they were entitled to; that an integrated or quasi-integrated oil producer was able to take from his leases all the production therefrom when his neighbor or neighbors, unintegrated producers, were not able to market any oil therefrom, or to market a production therefrom bearing any equitable relation to the quantity taken by said integrated or quasi-integrated producers. That the oil industry of the State of Oklahoma passed through the same experience in the Cushing field in Oklahoma between 1913 and 1915, and in the Healdton field the condition existed of an integrated or quasi-integrated oil producer being able to produce and market all of his production from a particular oil pool, although at the time an adjacent operator or another operator in the same pool was not able to market any or at the most an inappreciable quantity of the production of his wells. As a result of the integrated or

quasi-integrated operators of the State were utilizing a community property, namely, the gas pressure energy of the pools in which they were interested to the fullest possible extent and to the overwhelming detriment of the unintegrated operators in the pool, who, by reason of the action of the integrated producer, were compelled to either submit to drainage or run their oil into earthen storage where it evaporated and wasted. And affiant states that to meet this evil and to establish equality of production during periods of oversupply and otherwise to prevent waste, the act effective February 11, 1915, was enacted.

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Affiant further states that the proportional limitations placed upon the production of the wells of the Champlin Refining Company does not have the effect of preventing the said company from obtaining any amount of oil from the fields to which its pipeline is connected and which it may need for its refinery. Affiant states the fact to be that, if the said Champlin Refining Company desires additional oil, it can obtain it from either the Oklahoma City pool or the Greater Semi[illegible] area by purchase, and in this connection, affiant states that last September he requested the said Champlin Refining Company to take and run from the Greater Seminole area a greater amount of oil than it was taking, but said company refused so to do on the ground [fol. 224] that it did not require any more oil from the said Greater Seminole area or was unable to take it. Affiant further states that, if the Corporation Commission and its agents are enjoined from enforcing said orders against the companies named in paragraph 10 of this affidavit, or any of them, and if, as a result thereof any of them is permitted to produce its wells to capacity in the Oklahoma City pool and in the case of Champlin Refining Company, in the Greater Seminole area while the other producers are required to remain shut down or curtailed by the orders of the Corporation Commission the action of such company in so producing its wells to capacity will have the immediate effect of draining oil and gas from said other wells in said pools to the great detriment and damage of said other producers, and will result in said company obtaining a greater proportion of the oil and gas from the pool where its wells are located, than its just or proportionate share thereof,

and that this would be an irreparable damage to said other producers.

16

With reference to the taking of gauges to determine the potential production of the pools and wells for the purpose of applying proration, affiant states that in the Greater Seminole area and in all pools where, according to the orders of the Commission, proration was applied by pinching in the wells to a certain percentage of potential capacity, open flow gauges were taken, as provided in said orders, by requiring offset owners to witness the taking of said gauges and to verify the accuracy of same. That in addition to notice to and witnessing by said offset owners, all producers in the pool were given notice of the time that gauges were to be taken in the pool as a whole and were afforded an opportunity to witness any and all gauges thus taken. Where only one or two or a very limited number of new wells, coming into production between gauging periods, were to be gauged no general notice to all operators was given but offset owners were notified and required to witness such gauge and a representative of the Umpire also witnessed same.

In the Oklahoma City pool, up to the present time the proration has been on what is known as the "time basis," i. e., instead of pinching in the wells they were divided into classes and each class was permitted to flow to capacity for short intervals while the other classes remained shut down. This procedure was necessary as a temporary expedient because the potential production of the pool as a whole was so large and the gas pressure so heavy that an open flow gauge of all the wells could not be taken without waste since there were no adequate facilities for handling such large quantities of oil as would be produced during the taking of the gauge. But by permitting each well to produce to capacity a percentage of the time the same proportionality of taking was enforced as would have resulted from the other method of pinching the wells in to a certain percentage of potential continuous flow. During the period that "time" proration has been in effect in the Oklahoma City pool accurate individual well gauges have been obtained by observing and recording the results of open flow tests of new wells and the amounts produced by each well from time to time as it

was permitted to flow to capacity under the intermittent or "time" proration method.

By order of the Corporation Commission of December 30, 1930, the operators of the Oklahoma City pool are permitted to change the method of proration from the time basis to the pinched in or percentage basis on January 3, 1921.

[fol. 225] The affidavit of Wirt Franklin, introduced on behalf of the defendants-appellees, states:

1

That he is 47 years of age and has been an oil producer in the State of Oklahoma continuously since 1913, that he is President of the Wirt Franklin Petroleum Corporation, and a large stockholder in and Vice President of the Cromwell-Franklin Oil Company, and that he is in active charge of the management of the said Wirt Franklin Petroleum Corporation which now has eighty-five (85) producing oil wells in the Oklahoma City field in Oklahoma, which wells have a potential capacity of approximately 569,536 barrels per day; that affiant has been producing oil from the Healdton field and from other Oklahoma fields for the last seventeen years and is well acquainted and thoroughly schooled in the art and science of drilling and producing oil wells in the oil fields of Oklahoma and in protecting them from water encroachment and other forms of injury.

2

Affiant further states that he is intimately acquainted with the history of the conservation laws of the State of Oklahoma, to-wit, Sections 7954 to 7963, inclusive, Compiled Oklahoma Statutes, which were enacted as the Act of February 11, 1915. Affiant states that prior to the adoption of said Conservation Act he was producing oil in the Healdton field in Southern Oklahoma, and that he was then and is now and has at all times been what is known as an independent producer; that is to say; he never at any time has had any interest directly or indirectly in any Standard oil Company or in any of the large integrated oil corporations, but for the most of the time has been a producer only with-

out pipe lines or refineries; that he now owns a refinery at Ardmore, together with some small lines leading out to adjacent fields, but that he has no pipe line connecting with the Oklahoma City field where the great majority of his oil interests lie.

3

Affiant states that prior to the enactment of the said Oil Conservation Law, he, with other independent producers in the State of Oklahoma, were producing oil in the Healdton field where there was an overproduction of oil in 1914, and in which field there were certain producers who also owned pipe lines while this affiant and other producers did not have pipe line outlets of their own. There being no law to control the situation, the producers in said field who had pipe lines and storage facilities of their own produced their wells to capacity, although there was not a market outlet for all of the potential production of oil of the wells in the field; that as a result this affiant and other independent producers were compelled to also produce their wells to capacity in order to avoid drainage and the loss of gas pressure. Having no pipe lines or storage tanks into which to run the oil, this affiant and other unintegrated producers ran their oil into open earthen storage in large amounts; affiant states that in many instances dams were hastily constructed across ravines and dry creek beds and the oil was run into such temporary and inefficient storage from which large quantities of it evaporated, much of it seeped away, and finally, a heavy rain came and the oil was carried away [fol. 226] down the creeks and rivers, overflowing farm land and causing many fires, and other forms of loss to the citizens of the vicinity as well as to the oil producers. Affiant states that a similar condition of affairs existed in the Great Cushing Field which at said time also had a potential production far in excess of its market outlet. That in both of said fields those independent unintegrated producers who attempted to hold their oil in the ground suffered irreparable loss through drainage by those producers who did have pipe line outlets and were thus able to produce their wells to capacity. Affiant states that by reason of these facts the independent oil producers of the State of Oklahoma and from all of the fields in Oklahoma held a meeting at which

the fact that waste was thus being committed and the co-equal rights of the independent producers were being violated and destroyed were discussed, and as a result of said meeting said independent producers appeared before the Legislature of the State of Oklahoma which convened in January, 1915, and conducted a hearing before the Oil and Gas Committee of the respective houses of said Legislature extending over a period of more than two weeks; that at said hearing all of the independent producers or their representatives testified in favor of the enactment of the bill then pending and which was finally enacted as the Act of February 11, 1915, but that at said hearing the large integrated companies opposed the enactment of the bill, but the Legislature, in response to the request of the independent producers to prevent waste and to prevent the unfair taking of oil from pools where the full production could not be taken without waste, enacted the said Oil Conservation Act.

4

Affiant further states that he is very familiar with the manner in which orders Nos. 5189, 5246, and 5292 were made by the Corporation Commission and which are now in force in this State. Affiant states that he is the Wirt Franklin who on the 17th day of June, 1930, filed before the Corporation Commission a verified petition setting forth the facts that there was a serious overproduction of crude oil in the State of Oklahoma, and particularly in the flush and semi-flush pools described in said petition, and that the oil producers in said pool were threatening to and would unless restrained by orders of said Commission commit waste of crude oil or petroleum in each of said flush and semi-flush pools, including the Oklahoma City pool, and the Greater Seminole area, and prayed the Commission for a hearing on said petition and that it promulgate its rules and regulations to prevent such waste. Affiant further states that he is the Wirt Franklin who on the 16th day of July, 1930, filed before said Corporation Commission his application for a modification of the order No. 5189 which had been issued by said Commission after a hearing on said original petition, and affiant states that after a hearing on

said application to so modify, the order No. 5246 was issued. Affiant further states that in the filing of each of said petitions he was acting on behalf of himself and other independent oil producers in the State of Oklahoma, and that his action in so doing was not dictated by any of the persons or corporations named in the complaint of the Champlin Refining Company in the above-entitled cause, but the filing of said petitions were the free and voluntary actions of this affiant. Affiant further states that immediately prior to the filing of said petitions and each of them, he caused to be called together all of the oil operators interested in the Oklahoma City pool and invited to said meeting every operator large and small known to him to be in anywise interested in said pool; that said meetings were largely attended, [fol. 227] nearly every operator interested in the pool being present; that at said meetings and each of them this affiant secured a general discussion of the condition of impending waste in said pool and of the question of how waste could best be prevented and the correlative and co-equal rights of the producers at the same time be protected; that at said meetings and each of them the producers, large and small, integrated and unintegrated, unanimously approved this affiant's announced intention to file the petitions which he did file and unanimously agreed that such steps should be taken to prevent waste and that the plan of so doing, as set forth in said petitions, was reasonable and proper and best calculated to prevent injury to any well or to any producer in said field; that at said meetings the question of the practicability and desirability of time proration as distinguished from percentage of daily potential production proration was discussed, and the operators and their petroleum engineers present at said meetings selected and approved time proration for the Oklahoma City field as the most appropriate and least harmful method of curtailing the production from the pool to conform to market outlet.

5

Affiant further states that the plans as thus approved by all of the operators were embodied in said petition and substantially restated and incorporated in the orders which the Corporation Commission after hearing and after the re-

ception of evidence promulgated, and which are now involved in this cause as orders Nos. 5189 and 5246. Affiant further states that while he was not the petitioner in the application which resulted in order No. 5292, the same procedure was followed and the same approval was obtained from the great majority of the operators, large and small, in the Oklahoma City pool.

6

Affiant further states that on October 1, 1930, he signed and there was filed with the Corporation Commission an application for another proration order to cover the months of October, November and December, 1930, which initiated proceedings resulting ultimately in the making of order No. 5369, dated October 28, 1930; but affiant states that he was necessarily absent from Oklahoma during the proceedings which were afterward conducted by the Commission growing out of the filing of his said application, and has not personal knowledge thereof, but he states that prior to the filing of his said application, meetings of operators were held, similar to those hereinabove described, and that he attended said meetings and participated in the deliberations thereat and that there was no dissenting vote cast at said meetings whereat the plan set forth in the orders of October 28, 1930, was agreed upon, and whereat it was agreed that said proposed plan should be submitted to the said Commission for its consideration; that the said meetings were largely attended by producers both large and small, integrated and unintegrated, as was true in the case of the previous meetings hereinbefore referred to.

7

Affiant further states that he has observed the operation of time proration in the Oklahoma City pool for more than a year last past and states that the effect of said plan has not been to hasten water encroachment nor to injure the wells in the field so far as the said wells or wells producing from the same formation are concerned, but affiant be-
[fol. 228] lieves and therefore states the fact to be that the operation of time proration, under the conditions obtaining in said sand formation in said field, has been to retard water encroachment and to protect the co-equal rights of the pro-

ducers in the case of wells producing from the said formation. Affiant states that the wells of the several plaintiffs in the suits which have been brought in the United States Court, that is, the Champlin Refining Company, the Capitol Producing and Refining Company, the Century Petroleum Corporation, the Marco Oil & Refining Corporation, and The Oils Incorporated, are producing from the sand formation above referred to. Affiant further states that he is informed that the Corporation Commission in an order, either entered or about to be entered extending proration in Oklahoma for another three months, has or will direct that said Oklahoma City field be hereafter operated on the percentage basis in accordance with particular terms set forth or to be set forth in such order, and he states that his companies favored the change from time proration to percentage proration for that they believed and believe that the operation of said field hereafter on a percentage basis will be more practical and perhaps more efficient, and that it will protect as effectively as did time proration the coequal rights of producers in said field.

8

Affiant further states that the Oklahoma City pool now contains more than 600 producing wells, many of which are of gigantic potential daily capacity, and that in the underground reservoirs accompanying the oil and associated with it is a heavy gas pressure. Affiant states that if there were not restraint upon the production of wells in said pool the production would far exceed all transportation and marketing facilities, market demands and storage facilities, and that great quantities of oil would necessarily go into open earthen storage, into dammed up ravines, and to other temporary and inefficient receptacles, and a perfect saturnalia of waste would result; that in addition to such a catastrophe the oil producing properties of many independent and unintegrated producers would be severely drained; the gas pressure common to the field would be depleted and the result would be that many producers would never be able to obtain their pro rata share of the oil deposit.

9

Affiant further states that if the Corporation Commission should be enjoined from enforcing the said conserva-

tion orders against the Champlin Refining Company, the Capitol Producing and Refining Corporation, and the Oils Incorporated, or either of them, and the said companies or either of them should thereupon proceed to produce their wells to capacity or in excess of the amount of production that is allowed other wells under said orders the inevitable result would be that the wells of the said companies would drain the oil and gas from under the properties of other producers and the said companies would obtain more than their respective proportionate shares of the oil and gas of the field. That if the enforcement of said orders should be enjoined as to the said companies, the only manner in which the other producers could protect themselves against the drainage above referred to would be to also open their wells to capacity, and when that occurred the condition of waste above described by this affiant would occur. That in addition to the waste and the injury to the correlative rights of the producers as above described the opening up of the Oklahoma City pool to full capacity with all of the [fol. 229] oil and gas wells producing would cause large quantities of oil to go upon the ground and many billions cubic feet of gas to go into the air, great clouds of gas would envelope the field and its environs, including the City of Oklahoma City, and would constitute a great fire hazard which would endanger not only the property on the oil leases but the lives and homes of many people and the welfare of the City of Oklahoma City.

[fol. 230] The affidavit of Glen Grimes, introduced on behalf of the defendants-appellees, states:

That he is 31 years of age and is a geologist by profession; that he is an active member of the American Association of Petroleum Geologists, and received his education in geology at the University of Oklahoma; that he is at the present time Chief Geologist for the Wirt Franklin Petroleum Corporation and the Cromwell-Franklin Oil Company, and has served in that capacity for approximately three years; that as such geologist he is familiar with the Oklahoma City oil pool and with the manner of drilling and producing the oil wells therein, and, is familiar with the facts with regard to the oil wells off-setting No. 1 McCallep of the Champlin Refining Company which No. 1 McCallep

is located in the N. E. ¼ of the N. W. ¼ of the N. E. ¼ of Section 2, Township 11 North, Range 3 West; that he has read the affidavit of one R. L. Clifton, filed in this cause on behalf of the complainant and is well acquainted with the circumstances therein alleged of water appearing in said off-set wells. In this connection, the affiant states the fact to be that the two wells referred to belong to the Wirt Franklin Petroleum Corporation, and that one of them is a direct off-set to the said No. 1 McCallep of the Champlin Refining Company, and the other is two short locations West of the said Champlin Refining Company's McCallep No. 1 well and that this affiant is familiar with their history. That the said well which is a direct off-set is known as the Minnie Page No. 2 well and that said well did for a time produce some water, but that the reason therefor was as follows: That the well was drilled too deep into the sand and was at or below the edgewater level of the producing structure in this particular vicinity; when the water was encountered it was promptly plugged off after testing and the well has not since produced any water. Affiant further states that production of the water by said well was not in any manner caused by the proration plan in effect in said field; affiant further states that the other well referred to in the said Clifton affidavit is known as the Wright No. 1 well, and affiant states the fact to be that said well is not producing any water. Affiant further states that after said last-mentioned well had been shut down for sixty-five days there was a slight showing of water on the first day that it was thereafter opened up, but that said showing immediately disappeared, and that in the opinion of this affiant said water was not edgewater or it would have continued and increased in volume rather than ceased altogether as was the fact; that in fact the particular sand which produces water in that part of the field was not encountered in said well.

Affiant further states that he is familiar with the facts pertaining to the well known as No. 1 Naden, referred to in said Clifton affidavit, wherein it is stated that said well had an initial production of approximately five thousand barrels of oil and eighty million cubic feet of gas daily, and wherein it is further states that on opening said well a second time and after off-sets had been opened said No. 1

Naden produced less than thirty-five hundred barrels daily, and wherein it is stated that apparently repressuring effect of tremendous gas volume on the producing sands in this well had caused underground waste of the oil and gas reserves. Affiant states the fact to be that through a mistaken policy the said well No. 1 Naden of the Champlin Refining Company was cased upon the top of the upper gas producing sand and not at the top of the oil producing sand which is lower than the gas producing formation; that wells cased [fol. 231] in this manner on this particular gas sand create a back pressure of the oil sand and thus the gas by-passes into the oil producing sand, thereby bringing up a pressure on the oil sand which reduces the oil production of the well. Affiant further states that if the said Naden No. 1 well had been properly cased lower and at the top of the oil producing zone the volume of gas released would have been less and would not have created the back pressure upon the oil producing sand in this well and the oil production from the well would not under those circumstances have decreased so rapidly as it did.

[fol. 232] The Affidavit of M. J. Kirwan, introduced on behalf of the defendants-appellees, states:

That he has been engaged in the business of developing oil and gas mining leases, and of operating oil and gas wells and producing petroleum for the past 22 years, and is now engaged in that business; that during said 22 years he was employed as follows: Over five years as Petroleum Engineer in the California fields; approximately six years as a Conservation Agent in the State of California; one year as Petroleum Engineer in the oil fields of Japan; approximately four years as Petroleum Engineer and Superintendent of the U. S. Bureau of Mines, Petroleum Experiment Station, at Bartlesville, Oklahoma, and for approximately six years as Chief Engineer and Manager of the Production and Engineering Department of the Indian Territory Illuminating Oil Company; that he is now Manager of the Production and Engineering Departments of the Indian Territory Illuminating Oil Company. Affiant further states that said company drilled in the discovery well in what is known as the Oklahoma City Pool, having completed the same on or about December 4, 1928, as a pro-

ducer of oil in large quantities; that said company owns leases covering approximately 9,000 acres of land in and adjacent to said field, and has drilled thereon 236 wells that are productive of oil in paying quantities, and is engaged in the further development of its acreage in said field; that the potential production of the wells of said company is approximately 1,250,000 barrels per day (not including the share of said potential which belongs in some cases to joint owners of some of the leases owned by said company in said field); that said company has a market outlet in said field for only approximately 30,000 barrels per day because of the fact that the total market outlet of said field is greatly below the potential production of the wells in said field, and it is operating its properties in obedience to the orders of the Oklahoma Corporation Commission.

Affiant states that the wells of the Champlin Refining Company which are in said field are, so affiant understands, producing from sand formations, and he states that the periodic shutting in of wells producing from certain sand formations permits a readjustment of pressure in the sand and tends to retard the encroachment of water, and that for this reason the operation of said wells on the time basis referred to in the orders of the Corporation Commission does not injure them, but rather benefits them, and will result in a greater ultimate recovery of oil thru said wells. Affiant states that he has made a careful and intensive study of the various methods of operating oil and gas wells, and of the conditions which obtained in the formations from which the oil is produced in the Oklahoma City field, and operation of producing wells therein, and he states that it is his opinion that in the case of wells in the sand formations in said field water encroachment would be retarded by shutting in the wells during certain intervals to permit readjustments of pressure in or near the wells as compared with pressures in the producing formations down slope on the structure; that the continuous open flow production of wells near the edge of the productive part of the structure results in a decrease in the pressure of the formation immediately surrounding the well, thereby increasing the hazard of water encroachment from the down slope part of the formation, in addition to increasing the encroachment of water that has been found to exist in the base of the sand in certain producing wells.

[fol. 233] Affiant further states that Indian Territory Illuminating Oil Company does not own any transportation or marketing facilities, or other market outlet for any of its production in either the Oklahoma City field or the Greater Seminole area, except that it has a pipe line in the Oklahoma City field to its loading rack on the Missouri-Kansas-Texas Railway whereby said company is enjoying a market outlet of about 2,000 barrels per day of its Oklahoma City field crude oil production which it ships in tank cars to various purchasers thereof, in addition to a pipe line to the St. Louis-San Francisco Railway in the Oklahoma City field, but said line has not been operated recently. He further states that said company induced the Empire Pipe Line Company to lay a pipe line into the Oklahoma City field and to purchase production of crude oil therein, and that said pipe line company is purchasing about 20,000 barrels of crude oil per day therefrom, but is taking from said Indian Territory Illuminating Oil Company only about 15,000 barrels per day; and that said company was instrumental in inducing the Oklahoma Pipe Line Company to lay a pipe line into said field and to purchase production of crude oil therein, and that said last named pipe line company is purchasing about 13,000 barrels per day from said field, but that it is taking from said Indian Territory Illuminating Oil Company an average of about 3,500 barrels per day. Affiant states that it has been contemplated that the various purchasers of crude oil in said field would so allocate and distribute their takes among the several producers therein as that all producers would be able to market their respective prorated parts of the marketable production from said field, but states that if there were no such proration as is ordered and enforced by the Corporation Commission of Oklahoma, said Indian Territory Illuminating Oil Company would doubtless be in position to enjoy as outlets for its oil all of the purchases which would be made by said Empire Pipe Line Company, but even in such event said company would still be unable, were the market outlet for crude oil in said field to remain the same as it is now, to produce and market but a comparatively small percentage of its production over the amount which it is now able to market.

Affiant further states that said Indian Territory Illuminating Oil Company, as well as most of the producers of

oil in the Oklahoma City field, have not produced the full allowable percentage of the production from their wells as fixed by the said orders of the Corporation Commission for the reason that the market outlet from said field has not admitted thereof; and that the wells in said field which are operated by said Indian Territory Illuminating Oil Company, including not only those which it alone owns, but also those operated by it but in which others have joint interests, were underproduced as of September 25, 1930, to the extent of approximately 460,000 barrels, and has in its lease tankage a total of approximately 512,000 barrels ready and waiting a market outlet, making a total of underproduction plus unmarketed production of approximately 970,000 barrels which, by the terms of said orders, said company has been entitled to produce from wells in said field operated by it.

[fol. 234] The affidavit of J. M. Hewgley, introduced on behalf of the defendant-appellee, states:

J. M. Hewgley being first duly sworn upon oath states that he is the District Superintendent for the State of Oklahoma in charge of the development and production of the oil and gas leases belonging to the T. B. Slick Estate, and has held said position since the opening of the Oklahoma City field; that he has had approximately fifteen years' experience in the operation of oil and gas leases and the production of oil therefrom; and he states that said estate is the owner of fifty-eight producing oil wells in the Oklahoma City field; that the potential production of said wells is approximately 360,000 barrels per day, but that the said estate is unable to market more than ten thousand barrels per day of the production from said wells, and has been unable so to do for some time last past because of the extremely limited market outlet for crude oil in said field as compared to the total potential production of said field; that said estate does not own any transportation or market facilities of its own and has no market outlet for its production other than for that part of its oil which it is able to sell to other concerns who purchase oil in said field.

Affiant further states that said estate is operating its said wells as it has been during all the time that it has had production in said field under the proration order of the Corporation Commission of Oklahoma, and he further

states that the wells in said field are operated on what is called a time basis. He states that T. B. Slick departed this life on August 16, 1930, and that he was one of the most successful so-called independent oil producers in the Mid-Continent Oil & Gas Fields, and that after the opening of the Oklahoma City field and until his death he believed and advocated that the plan of proration which obtains in the Oklahoma City field, including the operations of the wells on the said time basis, was the most practicable and successful means for the conservation of the oil and gas in said field that had been suggested and was a hearty supporter of the orders of the Corporation Commission applicable thereto, and in this connection further states that the operation of the wells in said field upon the time basis instead of upon the percentage basis originated with Mr. Slick and that it was advocated to and adopted by the Corporation Commission.

Affiant is well acquainted with the operation of the oil wells in said field, and he states that in his opinion, based on his observations and experience, that said time basis plan of proration has proven successful in said field, and that, to the extent that the wells in said field are operated alike on said basis under the orders of the Corporation Commission, each producer is placed upon a basis of equality and fairness in respect of the recovery of oil from the producing formations in said field.

Affiant further states that most of the producers in said field are under-produced in respect of their allowable production under the said orders of the Commission due to the fact that the market outlet for oil in said field has not been as high as the last fixed percentage designated by the Corporation Commission, and in this connection states that the Slick estate was under-produced on the 26th day of September, 1930, five hundred thirty-six hours and had on hand in storage in the stock tanks on its leases approximately 225,000 barrels of oil ready to be run into the pipe lines.

[fol. 235] The affidavit of J. R. McWilliams, introduced on behalf of the defendant-appellees states:

That he is a graduate of the Engineering School of the University of Michigan; that for approximately twelve years last past he has been connected with the oil and gas

development and producing business in the Mid-Continental oil and gas fields, and that during the last six years he has been employed by Skelly Oil Company and has devoted a great deal of his time and attention and has given very careful study to the subject of the recovery of oil and gas from their natural underground reservoirs and the efficient utilization of the energy contained in said reservoirs in the recovery of said substances; that affiant has, during the last few years, written for publication several articles on the above mentioned and related subjects; that said Skelly Oil Company has production in a number of the oil fields in the State of Oklahoma, as well as in surrounding states, including the Oklahoma City field and Greater Seminole area, and affiant has made a careful study of conditions in said fields and said area.

Affiant further states that underground waste of crude oil consists in leaving in the underground reservoir oil which could and, hence, should have been extracted and recovered therefrom, and thereby made available for commercial utilization; then when such waste occurs it is due primarily to the dissipation of the gas energy naturally existing and contained in the reservoir when the pool is first discovered, by improper subsequent operations of the wells in the field.

In a reservoir the gas exists in a co-mingled state with the oil and there is also above the oil gas not so co-mingled, called free gas. In their sealed up condition in the reservoir, these substances are under pressure, sometimes quite high, as, for example, in the portion of the Oklahoma City field where the wells of Champlin Refining Company are located, as high as upwards of 2,000 pounds to the square inch. This pressure greatly compresses the gas, both that which is in solution with the oil and the free gas; hence, we have what is called "gas energy." In most reservoirs, when wells are drilled into them, the oil moves to the wells because of the inherent energy in the gas when under pressure, the amount of oil produced through the wells depending upon the degree of efficiency with which this gas energy is used. It is evident, therefore, that the gas energy must be controlled if there is to be an elimination of underground waste.

The oil and gas in a reservoir are in a quiscent state until the first well is brought into production. The equilib-

rium of forces which previously existed is then disturbed and the pressure in the immediate vicinity of the well is reduced. A differential pressure between the well and the surrounding area is thus established, causing the movement of the oil and gas to the point of lower pressure, that is, towards the well.

The oil and gas contained in the reservoir sand pores which are in the immediate vicinity of the well are the first to move to and come out through the well, and as the lowered pressure advances through the pores in directions away from the well, it establishes drainage channels radiating in all directions from the well the pore spaces being in communication vertically, horizontally, and in all directions. As there is a greater percentage of gas in the upper part of the [fol. 236] sand than in the lower, and as the gas moves with greater freedom than oil, it is obvious that the upper drainage channels become farther extended laterally than the lower ones which contain a greater percentage of the more viscous and slowly moving oil. This situation creates an upper area of lesser resistance through which the gas, being more mobile than the oil, leaves the oil in its lower horizontal channels and escapes in a vertical direction into the upper horizontal channels and thereby has access to the well without propelling its quota of oil. This gas expands vertically into the upper channels because it is blocked in the lower oil-bearing channels due to the proportionately increasing resistance of the oil as the distance the liquid must be moved to the well is lengthened.

Thus, the greater a well's drainage area, the more gas energy escapes to upper channels and leaves its quota of oil undelivered in the lower channels. So, it is evident, that the percentage of oil recovery decreases as the area of a well's drainage increases. And if one well be permitted to encroach upon another's drainage area by being permitted to operate upon a more generous basis than its neighboring wells, it will result in underground waste because the gas energy will, in such event, expand from a greater distance and cannot be so efficiently utilized in propelling the oil to the more distant well. Therefore it is evident that if one well be permitted to produce on a more generous basis than its neighbors, it will encroach upon its neighbors' drainage area, thereby dissipating a portion of the gas energy in those areas and effecting an

underground waste which could be avoided were all the wells forced to produce on the same basis. It should be understood that if one well were allowed to produce on a more generous basis than others in the general vicinity thereof, its individual ultimate production would be greater than otherwise, but the neighboring wells, due to the dissipation of gas energy expanding over a greater distance, would lose a much greater amount of oil than the one well would gain. The resultant effect on the area as a whole would be a smaller ultimate recovery therefrom than if each well be restricted to the drainage of only its own area; and the difference in the ultimate recoveries left unextracted in the ground constitutes underground waste of the oil.

Furthermore, water which is present in most all oil-containing reservoirs is, because of its density, positioned as a rule in the lower portions of such reservoirs, underneath the oil or on the lower outer edges of the formation and is originally under approximately the same pressure as the gas and oil. Water, like gas, will travel through a sand more readily than oil, especially if the viscosity of the oil is changed by a diminution of the amount of gas in solution with it. It is quite important, therefore, during the flush stages of production, that is, when the pressure on the gas, oil and water is near the maximum in the particular reservoir to drain the slower moving, viscous oil from the reservoir at such a rate that it can have time to follow the winding pore channels to the wells and not be at a disadvantage with the more mobile water and excessively mobile gas. If this is done the pressure on the gas and oil will remain relatively the same as that on the surrounding water and the water under pressure will then also act as a propelling agent to force the oil to the wells. On the other hand if the attempt to withdraw the oil from the reservoir is too rapid over an extended period of time then the ratio of the gas to the oil produced will increase thereby decreasing the efficiency of the gas energy as a propelling agent at the same time making the oil remaining in the [fol. 237] sand more viscous and less mobile because less gas is in solution. There will also tend to be an adjustment in the relative positions of the oil and water in their progress toward the wells in that the water being the more mobile of the two will make faster progress and if these

relative rates of travel are allowed to continue the result can only be that the water gradually encroaches toward the wells, reducing the number of drainage channels through which the oil should travel. Ultimately the water reaches the wells gradually and effectively shutting off the drainage of the oil to them, trapping it in pockets from which it is practically unrecoverable and thereby constitution underground waste. Proration of flush fields therefore tends to eliminate underground waste of oil because the rate of extraction of the oil is retarded thereby retarding the rate of water encroachment.

[fol. 238] The affidavit of H. M. Stalcup, introduced on behalf of the defendant-appellees, states:

That he is Vice-President and in charge of the Production of the Skelly Oil Company; that said Company owns and operates producing oil and gas leases in the Greater Seminole Are- and the Oklahoma City Pool in the State of Oklahoma; that in the Greater Seminole Area said Company owns ten (10) producing oil and gas leases on which it is operating thirty-one (31) producing oil wells, and that in the Oklahoma City field it owns and operates six (6) producing leases on which it has drilled and is operating seventeen (17) producing oil wells; that there are approximately 2,800 producing oil wells in the Greater Seminole Area, and that under the existing proration orders of the Corporation Commission said wells in said Area are and have been for more than one year last past operated on what is called the "percentage basis"; that there are approximately 557 producing oil wells in the Oklahoma City Field, which have been and are being operated under proration orders of the Corporation Commission on what is called a "time basis," that is, the wells are divided into Classes and one class is permitted to produce for a certain length of time and is then required to shut down while another class produces for an equal length of time, and so on.

Affiant further states that he has been actively engaged in the business of drilling and operating producing oil wells for approximately fifteen years, and that in his opinion, based upon his knowledge, acquired from close contact with and stury of the various methods of operating producing wells, the operation of the wells referred to in the Greater

Seminole Are- upon the percentage basis and of those referred to in the Oklahoma City Field on the time basis, have not and will not be damaged by reason of either of said methods of operating the same, so long as all of the wells in the said pools, respectively, are operated and produced on the same basis of curtailment.

Affiant further states that should any of the wells in either of said fields be operated and produced substantially in excess of the percentage allowed by the orders of the Corporation Commission while the remainder of the wells were limited to the production of the percentage fixed by the said Commission for said fields respectively; then said remaining wells, and particularly those nearby and in the general vicinity of the former, would, in affiant's opinion, based on his experience and knowledge, result in serious damage by reason of drainage of oil from the lands surrounding and in the vicinity of the former, and would result in a serious reduction of the untimate recovery of oil through the wells that remained under operation in accordance with the said proration orders, due to the dissipation of the pressure in the oil containing formation.

Affiant further states that said Skelly Oil Company is now engaged in drilling three wells in the Oklahoma City Field. He states that the present potential capacity of the seventeen (17) producing wells of said Company in said Oklahoma City Field is approximately 180,000 barrels per day, including one well brought in September 25, 1930, with a potential capacity of approximately 90,000 barrels per day; and that said Company has no marketing or transportation facilities of its own in said field, and that said Company is not at this time and has not been, for some time last past, able to market exceeding 3,000 barrels per day.

[fol. 239] Affiant further states that said Company has no transportation or marketing facilities of its own in the Greater Seminole Area, and that its wells in said Area have been operated in accordance with the percentage of allowable producing fixed by the orders of the Corporation Commission, and that there is not a greater market outlet at this time in either of said fields or Areas for a greater percentage of production than has been fixed by the said Commission for said fields respectively.

[fol. 240] The affidavit of Otto Bradford, introduced on behalf of the defendant-appellees, states:

Otto Bradford, of lawful age, being duly sworn upon his oath states that he is the person designated by the Corporation Commission of the State of Oklahoma as an agent of said Commission to aid in the enforcement of the Proration Orders of said Commission and as such keeps and has kept under his supervision record of the production of oil in the Oklahoma City pool said records being compiled from data furnished by the various producers of oil in said pool and from data assembled by himself and under his supervision; that under the present orders of said Commission producers are permitted to open each well eight hours for initial test after each said well is first brought into production, which eight hours is charged as producing time and is required to be equalized and after initial test, four hours in each twelve days. That if any well be opened for more than the allowed time under said orders the same is charged in said records as overproduced; that according to his said records The Champlin Refining Corporation has two producing wells in the Oklahoma City Field and that up to and including December 22nd, 1930, the allowable time, actual time opened for the production of oil (not including time when gas only was produced) and time and barrels of oil overproduced is as follows:

Naden No. 1

Allowable time for Production under Corporation Commission Orders: 2 days, 11 hours, 30 minutes.
Time opened for oil production: 3 days, 14 hours.
Time overproduced: 1 day, 4 hours, 30 minutes.
Barrels of oil overproduced: 5,045.

McCalep No. 1

Allowable time for Production under Corporation Commission orders: 2 days, 3 hours, 40 minutes.
Time opened for Production: 4 days, 5 hours, 30 minutes.
Time overproduced: 2 days, 1 hour, 50 minutes.
Barrels of oil overproduced: 14,352.

Affiant further states that he is experienced in the oil and gas mining business, that he is familiar with the location of each of said wells and with the records of producing formations in the Oklahoma City Field, that the same have offset wells upon the property of other producers in very close proximity to the said Champlin Refining Corporation wells and that the formations in which said wells are drilled and the location of said wells are such as to permit drainage to the property of the Champlin Refining Corporation from the property of other producers surrounding the same if said wells are allowed to produce a greater length of time than the offset wells.

[fol. 241] OFFERS IN EVIDENCE

The plaintiff-appellant introduced certified transcripts of the testimony of witnesses and other evidence received by the Corporation Commission during the hearings conducted by the Commission on the application for the said orders of October 28, and December 30, 1930. At the hearing of this cause, plaintiff's solicitors contended that the respect in which the Commission had no evidence before it to sustain its orders was on the subject of actual waste. The testimony before the Commission in respect to actual waste was abstracted in the trial court by the respective counsel and is as follows:

[fol. 242] Plaintiff-appellant's abstract of testimony taken before the Corporation Commission as to waste is as follows:

Beginning on page 79 and concluding on page 81, RAY M. COLLINS testified on direct examination that he had production in the Cushing pool and other new pools where there was an overproduction and at that time they let it go down the creek saying "we could not take care of it, and our neighbors were running theirs through the pipe line"; that if there were no steel or wooden storage, or appreciable amount thereof to store oil permitted to be produced, it is a necessary result that oil must either go into earthen storage or be entirely wasted; that in earthen storage there may

occur a loss of anywhere from 50 to 90% due to evaporation, absorption or washing.

On cross examination, beginning at page 100, the same witness testified that there is no waste going on in Oklahoma now whether the field is prorated or not; and that everything is running satisfactorily in Oklahoma now; that he wants to prevent actual waste which he says on page 101 is opening up a well and letting it go down into the ground; on page 103, that he wants proration to prevent actual waste for one thing and on page 104, that he would want a rule to prevent waste besides (a rule or order by the Corporation Commission stopping the tremendous drilling campaign in the Oklahoma City field. On page 110 he testifies he wants proration to prevent physical waste and to prevent one neighbor taking more oil out of it than his proportion. On page 111 Collins testifies in answer to the proposition and question: "If you take oil out from under me, I am going to run my well wide open. That is not physical waste, is it?" "That if I let it go down the creek it will be." He further says that he cannot name a producer in this field that opens his well and lets the oil run down the creek at the present time or in the last 5 years.

On page 112 he testified that if you lift proration there will be actual waste, for the reason that a man who has no pipe line facilities or cannot sell his oil will let it go down the creek; that he doesn't know of any oil being stored in earthen storage and that he hasn't known of any since about the Cushing field days which he says was about 15 or 16 years ago (page 114).

On page 115 in answer to the proposition presented where a man owns his own well, pipe line, refinery and marketing facilities for the finished product and the question as to what harm there would be in letting him run to full capacity that "as a matter of waste, if I had an offset well and you opened your well and I was not able to take care of mine, I certainly would build earthen storage and try to take care of it in that way." On page 116 he testifies that his only reason is that it would be taking more oil from his neighbor than what he considers to be a due proportion.

At page 178 Collins testifies that they intended to include the Osage reservation in the proration orders, and at page

180 that he doesn't believe there is imminent danger of waste being committed there; and further that prior to the time he made this application he did not ascertain whether there was any waste in those fields other than the ones heretofore prorated. He testifies also at page 180 that in his [fol. 243] judgment there are many areas, many wells, many leases which will have to be given special attention by the Commission to prevent actual waste by reason of this order; that is wells making water and wells that have no gas pressure to speak of and others that are poorly equipped, if this order is forced on them and given strict enforcement, that will be positively injured rather than benefitted.

At page 181 he says that if the little wells producing from 5 to 25 barrels per day which the contemplated order places under proration were permitted to run 100% waste would be imminent in those fields; that the waste would occur by the fact that this purchasing power has been transferred to Oklahoma City, and they would not be able to take care of it. At page 183 he states (referring to fields of small production that there has been no waste in the past.

At page 201 COllins says that his statement that there is no waste and has been no substantial waste in the State of Oklahoma is due to the fact of these very proration orders that have been issued in the past.

At page 215 Collins in answer to a hypothetical question "supposing the I. T. I. O. Co. had a demand for 100,000 barrels of oil per day at 50 cents per barrel which they wanted to sell and the other producers wouldn't take that for their oil, if it would be waste for the Commission to let them sell it" testifies that it would be waste (page 216-217). At page 218 he says his reason is that the other fellows would have to run the oil into earthen storage. He states further that if they could show there was actual demand and no waste he would certainly recommend it.

At page 223 Mr. Collins testified that "we" did not take into consideration the financial ability of a correlative owner to drill a well; that as long as he (a correlative owner) took ratably as the common pool was prorated, there would be no waste. He says that he wouldn't try to protect any correlative owner of the common supply because he hasn't got a well on his lease (p. 224).

At page 252 MR. VICTOR H. SMITH testified that his company has one well in the Oklahoma City pool and that they can handle a percentage of the production from that well without any waste occurring in connection with it, but not all the potential which was rated as 150,000 barrels per day based on some two hours' gauge; that they could handle possibly 30 or 40,000 barrels per day through their plant and other facilities without waste, except perhaps waste of gas; that if they should find it would produce more than they could handle it would be operated so as to commit no waste of oil (p. 253).

At pages 270 and 271 Mr. Smith testified that if the Oklahoma City field was opened up and no limit placed on production all the little refineries in the state would open up and "the first thing you know we would have 3 cent gasoline," but there wouldn't be any waste in connection with 3 cent gasoline because "we would get a lot more airplanes."

At page 273 Mr. Smith testified that if oil were to go down in price to 50 cents the big companies would build tanks to put it in and that there would be a waste in connection with the storage of oil in steel or earthen tanks. At page 275 Smith says he doesn't believe there would be any waste of oil if the Commission should set aside its orders and turn everybody loose in the Oklahoma City pool, un- [fol. 244] less the producers would be foolish enough to try to put light oil in earthen storage. In answer to the question: "Isn't it a fact that in every flush field that we have had in Oklahoma where we didn't have proration they have put it in earthen storage?" he says: "I wouldn't say so on light oil." Upon being asked if they didn't do it in Cushing he replied "Yes, if you go 'way back in the old days. They didn't have anything else to do with it." He says they did that at Smackover but not on light oil. He states there is waste on heavy oil in earthen storage but not as much as the light (P. 726). The small producer would take the crude as far as his facilities would permit and without waste. If the larger producer cannot ship all of his oil out he will keep his wells shut in until he can increase his facilities so as to handle more (p. 277).

MR. DYE testifiying at page 300 says that to shut in wells entails waste of oil because "if you shut in a well you never

get the maximum production back in some cases." The witness further testifies at page 304 that he has been engaged in the oil business since 1916 and that they have never had any waste; that he doesn't know of any waste in the production or handling of crude oil anywhere and that the question of waste is not bothering anybody at this time as far as he knows.

At page 308 the following question was asked: "In your judgment, if proration orders were lifted by the Commission in that field (Oklahoma City) and that field was opened up, would there be any waste of crude oil or would there be any taking out of proportion by one operator of a well as against another?"

The witness, Dye, replied: "There would be a discrepancy in the taking of oil; but I doubt whether anybody would allow the oil to flow down the creek. They would probably keep their wells shut in if they couldn't sell it." At page 309 he says it is problematical as to whether there would be any waste of crude if the lid were taken off and that field were opened wide up; it would depend, necessarily, upon how the operators in the field would work.

At page 328 Mr. Dye testifies, relative to waste, that if all the producing companies that have manufacturing and marketing facilities would take the position that they were going only to produce and manufacture their own products it would cause a lot of waste and abandonment of old wells if they contiued to drill the way they have been.

Mr. E. B. Reeser testifying at page 333 states that if production were in excess of reasonable market demand the condition of waste would follow. At page 334 he says by physical waste he means that "whenever you produce oil in excess of the demand it either goes into earthen storage or tanks; or down the streams or water courses, and in either event loss results." He says he doesn't know of anybody in Oklahoma today that is running oil into streams, nor of anybody that is putting it in earthen storage, or of anybody that has in Oklahoma within the last 10 years. To the question: "Then there is no running down the streams nor putting in earthen storage, so your idea, so far as Oklahoma is concerned, Oklahoma is not now suffering an eco-

nomic waste?" he replied: "No; I am talking about what would result if more than the market demand were produced." He states again at page 335 that there is none run down the streams but that physical waste would result if a volume greater than the market demand was produced; that would result if put in steel storage by evaporation. At page 338 he states he doesn't want an over-supply because it would produce waste by placing it in steel tanks; and in that event you would have an added waste of the cost of [fol. 245] producing your tankage, and then the evaporating losses." He says: they should be required to stop storing oil in steel tanks because that would stop waste by steel tankage.

Mr. Reeser testifying at page 391 says that if there were not restrictions of production there would be actual waste; that waste has been prevented by the orders of this Commission from time to time; that prior to the time we had the law under which we are now operating there were conditions of actual waste in times of overproduction; that there was earthen storage in Oklahoma; that there was waste and that there was oil going down the creeks.

Mr. C. C. Herndon testifying at page 403 says that in his judgment if there were not a proration order in effect, or if one were not continued in effect, there would be actual waste of crude oil in the state of Oklahoma; that he considers such waste imminent if no such order were made; that the potential production of crude oil in the state of Oklahoma is in excess of the reasonable market demand for it. At page 429 the same witness states: "where the potential production of big flush wells in the aggregate largely exceeds the reasonable market demand, then to permit one man, because he happens to be equipped with these things, to operate his wells to capacity or above the level that can be maintained by others, either induces waste on the part of the others or causes the loss of other oil to the other man, which in turn leads back to waste, because under those circumstances men protect themselves in the best way they can."

Mr. Herndon testifying at page 437 says he knows of no wells in the Stephens County field where the oil is being wasted, and at page 439 he says that up to this time there

is nothing wrong with the way the oil has been handled in Stephens County, but there will be something wrong if they are not brought under this proration order because there will be a transferrence of purchasing power to Oklahoma City.

At page 441 he testifies that in figuring on cutting down the production in Stephens County as keeping it cut down and preventing further development by test wells that is now in effect under the proration order they have not considered the welfare of the producer of oil but rather the alleviation of waste in this state during this time of over production. He says at page 442 that he is not assuming that the producer in Stephens County has committed any waste but he thinks he will within the meaning of the statute. He doesn't know where in the Stephens County any man has committed waste in any sense but that it is imminent; that waste will occur. That it will be done by production of oil in excess of the market demand for it. If the Stephens County people increase their production 500 barrels per day that will constitute waste, if there is no market demand for it. If there is a market demand for it, it will not.

At page 455-456 Mr. Herndon answers the question: "You would not waste any of your oil, would you?" with the reply "I dare say we would."

Mr. A. V. Hoenig testifying at page 466 says he doesn't believe the full production of the Oklahoma City field could be produced without waste and that in his judgment the continuance of some sort of a proper proration order is necessary to prevent waste in the field; and at page 467 that to produce this field without restriction or proration would result in a very material waste of oil and gas.

[fol. 246] Mr. Otto Bradford testifying at page 531 says that in his judgment the Oklahoma City field could not be produced at its maximum production without physical waste for there is no way for a good part of the oil, at present, to be handled; that if the wells were all producing he thinks it would necessarily result in earthen storage or actual escape down the streams; at page 532 he says that he knows of no demand here for purchasing oil to be put in storage.

At page 533 he states that it is his opinion if they were to open up all the wells in the Oklahoma City field they would put it in earthen storage; but that they could keep their wells shut in if they would. At page 534 he says he knows of no big oil company who now stores oil in earthen storage because there is no need of it, nor of any producer of oil that runs it down the creek—that that is a past matter of many years ago.

At page 536 Mr. Bradford was questioned as follows: "Assuming that testimony to be true, and assuming that there is a refinery in this city with an outlet running into this field and has its own production in this field and it takes that production and runs it to its own pipe line, refines it in his own refinery and markets it through its own marketing facilities, in the usual and ordinary way that refining business is carried on, wherein would there be any waste in such a transaction?- He answers: "There probably would not be any waste in the operation of that particular one well if the offset wells would remain shut in." He states this man's activities would not be waste but that it would probably result in waste. It would result in waste because if he had the offset well he would run it same way—to the pipe line, tank cars or turn it loose. He says if he could not sell it he would let it run down the creek.

At pages 540-541, the same witness testifies that to open the field up would necessitate the use of earthen storage; there is not enough available storage to take care of it though they could probably have built tanks along from time to time so as to have had plenty of facilities for taking care of it.

At page 547 the witness testified that some wells have gone dead but that he is not a production man and does not know the cause. These wells were all in the lime production. Water swallows them quickly.

Beginning at page 555 and continuing through page 557, Mr. Otto Bradford testified that he was acquainted with the Healdton field in the days of its glory in which a situation was created (which approximately gave rise to the present law), where the thousands of barrels of oil were put in earthen storage, plus that which ran down the creeks from which there was enormous wastage involved by evaporation, seepage and running down the creek; that the numerous

skimming plants erected on the creeks did not in any way recover all the oil that went down the creeks; that he did not know the per cent of earthen storage but that he knew of several earthen storage tanks that were built; that these storage tanks retained some of the oil but that some was lost by seepage, and quite a little was lost by excessive rains which would soften the dams and they would go out. This was not due alone to the fact that the production was more than the market demand but that the only pipe line in the field, Magnolia, could not possibly take care of all the production. They ran their own and a little besides so the other fellows produced anyway they could to hold it. At [fol. 247] page 559 he says all this took place about 1914 and at page 560 he says this field produced low gravity oil and that the higher the gravity the more the evaporation.

At pages 568-571 Mr. J. R. TRAVIS of Duncan, refiner, pipe line owner with refinery connected with 195 wells and with many years in the business, qualified as an expert. He states he was in the Cushing field; that there was no oil went into earthen storage during the Cushing book, there was some that went down the creek which occurred when they were bringing in the wells and did not shut them in properly or occurred when they were swabbing the wells after the gas pressure went off and the big waste occurred in 1913 and early part of 1914, and in 1915 or January 1916 the waste had ceased. He purchased oil in the Burnett field, Cotton County field, Stephens County field, Oklahoma City field and has been out there many times, and said "I have never known of any deliberate waste where they wasted it purposely never in the history of my experience in the oil business." In the Cushing field oil was wasted on account of the equipment not being right to hold it. They put it in wooden tanks and they leaked and were not well fixed to take care of the oil. They drilled a lot of those wells there without even having a mastergate, but under the improved modern methods producers are equipped with steel tanks. There are no wooden tanks any more, all tanks are steel and no earthen tanks for storage that he knew of. He says we hear nothing of that kind any more. The various ways that crude oil in the process of production can be wasted, or if when bringing in the well they are not

properly equipped in case of swabbing and when they are shooting wells all those conditions will exist whether there is a proration order or not, and the proration orders pretend to have nothing to do with the bringing in of the wells or the control of the drilling. "With our modern methods of handling I think there would be no waste to amount to anything unless it might be in the shooting of the well," but the proration order has nothing to do with that and the witness knows of no other kind of waste that occurred in connection with the production of crude oil. He has been in the business about 30 years.

At pages 584-585, Mr. Travis states that there would be no waste if he were permitted to take his oil out, run it through his pipe line and into his refinery; that the only waste he could see would be a reduction in price, that he doesn't know of waste now such as it has been defined by the various witnesses. Again at page 587 he testifies that he has his own pipe line and marketing facilities and that absolutely no waste occurs in connection with the handling of it.

The same witness testifies at page 589 that you can't shut a well in without hurting it. He says, "You have no business drilling that sand. If you leave the drill out of the sand you won't hurt the sand, but once you drill it you had better produce it." At page 590 he adds "Because it goes somewhere. I don't know where it goes. The water comes in on it, and if the water wouldn't come in on it the gas goes somewhere; the gas gets away from you." He states the only remedy for over-production is the cessation of drilling.

Mr. Travis testifying at page 604 says the situation will take care of itself if let alone and there will be no waste. The Corporation Commission or the farmer will not let you run it down the creek. He has never known of any going down the creek maliciously or any other way in the last 15 years. Sometimes they will let a well get away [fol. 248] from them. P 605. He says, there has been no oil wasted and there would be no oil wasted unless it happened like a wild well out here of the I. T. I. O. that got away from them. There has been more oil wasted, I expect, in this field than any other field in the state in the last 10 years which he says is even under proration and none of it

done on purpose for that would happen whether there were proration orders or not.

The same witness testifying at page 629 states he is tied onto 195 wells in the Stephens County district; "there is not a well that I am tied onto, with the exception of one, that it wouldn't ruin it to be shut down." At page 630 he says, "I have always been told and thought that we must not shut them in. I have had a producer come to me at 2 o'clock in the morning and get me out of bed so I could run his oil; if I didn't he was going to have to close the well in and ruin it. I have heard nothing contrary until the last year or two."

In reply to the question as to what would be the effect on a well of shutting it in for a certain number of days under the proration order the witness says that "all the wells that I have ever had any experience with the water either came in or the sand paraffined up. If the water comes in it is hard to ever get it off the sand. If it paraffines up you might shoot it and get it off the sand." As to the effect on the ultimate recovery of a pool like that at Oklahoma City of shutting in the wells that it would hurt them if allowed to flow wide open but to pinch them in and let them flow some all the while would help the wells.

At pages 659-660, Mr. Travis on cross-examination testifies that there are some oils you can't waste by putting it in earthen storage but most Oklahoma oil would be wasted if put in earthen storage. If put in tight steel storage he knows of no waste that would occur. There is some initial loss by evaporation. He stored some in Stephens County 10 years ago and there is probably a 2% waste there. He says at page 663 that it would be a crime to put Oklahoma crude in earthen storage outside of a little heavy asphalt base crude but that he doesn't know of any earthen storage in recent years. He states there would be a small loss if put in steel storage and left for any appreciable time. He doesn't know anything about the Smackover field or of earthen storage used there.

The same witness at pages 671-673 says he is not favorable to any kind of storage except in cases of emergency like we have now; that oil is a lot better out of the ground in storage than it is in the ground mixed up with salt water, if you tap a field you ought to go ahead and oper-

ate—that it is better to take it out after it has been tapped; that the loss would not be near as much by storing it than it would if you leave it in the ground after the field has been tapped like this one. At page 672 he says that if your storage is tight, the ordinary Oklahoma crude will probably lose from 1 to 3% over a year and then it won't lose any more; that there is some loss in handling high gravity crude or gasoline any way you handle it whether you have proration or not and tanks are strapped 3% short to cover that whether they run it immediately to the refinery or not. He states at page 374 that he knows there is 100,000 barrels of $3 or $2.70 oil stored in the Duncan field and that it has been there over 9 years.

Mr. A. V. Boswell after stating that he has been connected with the oil business 30 years as a hydraulic, petro- [fol. 249] leum and mining engineer says he has had experience at Bartlesville, Kiefer, Glenpool, Ardmore and Oklahoma City. He says at page 711 that his experience has been in the drilling in of any wells that he has operated in, as long as you keep those wells flowing and allow them to flow freely, you are going to get a full production, but when you close a well in, either completely or partially, you are going to ruin, to some extent, the production of oil from that well. He says we have tried it several times, at least in 5 fields in Oklahoma and that has been his uniform experience without any exception.

He says at page 712 that it has always been the individual engineer's judgment upon which they all agree, as far as he knows, that it is injurious to a well to shut it in. There are three ways it is injurious to a well to shut it in. You might kill the well altogether with water. If it is a paraffin base, those little crevices where the oil and gas comes from might become what we call leaded up, or closed up by the paraffin, or the substance that we call paraffin. If it is asphaltum base the same thing applies. Those wells are going to be injured. That has been our advice as long as I can remember, even back in the Pittsburgh field in Pennsylvania. Confining it directly to the Oklahoma City field, the condition of the sand on the west side of the field would perhaps not injure a well quite as much as on the east side where it is a lime formation. I would consider the well would be ruined if shut in 65 days.

The witness says at page 713 that the history of the wells is that when you reach the lime formation you are much more liable to get salt water than you are in the sand formation. In Oklahoma City those that have been shut in when opened again have not produced like they did when they were closed in. There has been more wells on the east side of the field that have decreased in production so that actual experience bears out the theory. He says shutting in these wells will have no tendency to conserve the oil, either for the use of future generations or for any other time. The losses from closing those wells would be so much more than the losses would be from the development of the wells so that in his opinion the shutting in of the wells causes waste rather than conservation; after the sands have been penetrated, it is much better to keep them open. These things are just as well known as the multiplication table. He says "We fellows who have observed those things and examined them have found that is true in every instance." He states this was true in Bartlesville, Glenpool and Ardmore.

At page 715 he says that when a field comes in there is always flush production caused by gas rock pressure, and gas pressure which is larger in the beginning and later recedes; if the wells are permitted to produce it keeps all the avenues open. He states at page 718 that he has observed the Hall-Briscoe well No. 1 which came in at 25,570 barrels and the flow was retarded by being closed in so that they are now able to get only 18,000 barrels; and on page 719 he says shutting in the well was what injured it.

At page 722 the same witness testified that he doesn't think there is any wastage of oil in this field at all; that he has never seen any; that the proration orders have not cut down actual physical waste.

The witness states at page 723 that when there is actual physical waste that is the fault of the one who owns the particular well which is governed by statute. He says [fol. 250] there is no reason why one should be penalized when he is not committing waste because some one is committing waste; there could be no erroneous waste in connection with the operation of this field if it were permitted to run wide open. At page 724 the witness says any producer should be sent to the asylum if he opened up his wells and let it run wild out into the field.

Mr. Boswell states at page 735 that when you cut off the production you are going to hurt the wells and when you hurt the wells you are creating a waste right there; you are wasting your own substance. Again at page 738 he says shutting in the wells to 25% would cause a waste and loss; by restriction as it is we will have ruined wells; again at 739 he says it would injure the wells to shut them in to 25%. At 740 he says the better way is to let it flow unrestrained if you want to get the full value; that it is better to let it run steadily.

At page 741 the following question was asked:

"Now, for the first time in this proceeding, I would like to ask you this: Having solely in mind the advantage of the people of the State of Oklahoma, and we will say the future generation of the people of the State of Oklahoma, as influenced or affected by our great natural resource, crude oil, which is the better way to conserve those interests, to let these wells run freely, except as restrained from physical causes, or to have them run under proration orders as they are now being run?

A. Well, the former, I should say, would be very much better.

Q. Now, why?

A. Because if you want to adjust this matter and get the oil that is already developed, you have got to let it run unrestrained. Now, that is going to run the price of oil down some, and when you do that, that is going to stop the fellows in the wildcat field, and there is the only place it can be regulated, because when you drill into an area or into a triangle like this and start development, you cannot stop that oil from flowing. If you do you are just as liable to ruin your well as you are if you drop something in it and ruin it."

At page 742 he says he thinks it would be better for the consuming public and also better for the state of Oklahoma as a state and an entity that these wells should be permitted to run open continuously, in the meantime restraining actual physical waste. At page 769 he states that he thinks the proration orders have increased waste by reducing the ultimate output of the well.

The same witness testified at page 777 that he doesn't think there would be any waste of oil at all if you opened

the Oklahoma City field wide open; it would go to markets and storage. At page 779 he says the average loss in storage is about 2% in steel tanks which you have lost but if you shut in a well you are going to lose 25 to 30%, maybe 50%, maybe all of it. He testifies at page 780 that he doesn't know of flush fields running oil down the creek; that wells got away at Cushing and Healdton just as the Mary Sudik at Oklahoma City and some oil was lost; that was an accident. At page 781 he says there is nobody that is putting oil in earthen tanks now and he knows of nobody who would if they opened this thing up; producers in no state whether they have proration or not is going to put it in earthen tanks.

[fol. 251] Mr. JAKE HAMON testifying at page 810 makes the statement "If this proration plan is put into effect we believe that it will save our wells from waste; if not, economic waste will certainly be obtained, because the small producer cannot afford to build steel tankage for his oil. The cost of the average tank for the average small production is prohibitive. Our production will be wasted.

Beginning at page 813, Mr. L. C. HIVICK says with reference to the waste of crude oil in the last 10 years in production or marketing that "the new equipment has cut out considerable, cut out, I might say, seven eighths of the waste of oil to what it was in the early days, such as control heads and gate valves, Christmas trees, and different ways of equipping them up. They have now all steel tanks, and we used to have all wood and they were leaking.

At page 810 he says if the proration orders were lifted, there would be no more waste than there is now. Proration orders do not affect waste. He states again, at pages 818-819, that he does not think lifting the proration orders will have any effect upon the matter of wasting of oil. He says he couldn't see where it would waste any more to lift the proration orders unless the man was just an outlaw and violated the orders that now and always have been here to preserve the state's resources.

The same witness states at page 823 that he doesn't think they would open up the wells and let it run out on the prairie if the quantity taken out was greater than the shipping facilities; he says he never heard of it in Cushing or

Seminole and he was in all of them; the only cases of that kind would be where the wells got away. He says they have not had proper equipment up until late years and some oil would be wasted until they could "harness" up properly. There would be some oil run down the creeks from the sun heating against the wooden tanks.

The witness says at page 824 that it has always been conceded that it hurts a well to shut it in; in some ways shutting in a well has a tendency to create waste of crude oil; you would get more oil, a lot more, if you keep your well open. As a matter of conservation he states as long as he could sell it he would let it run. At page 837 the witness states "I don't think they are wasting any more oil here because they have proration, than they would if they did not have it."

Ed Trippett testifying at page 859 says "as a general proposition I think that the closing in of wells will hurt them. Some cases it does not; more cases it does." There the well is producing some water and the gas pressure is weak to shut it in would ruin it in course of time. He says he has seen wells that were good oil wells shut in that were not making any water and when they opened them up for at least three weeks they would not make any oil at all, and others making both oil and water that never came back. Some were opened up in Oklahoma City that were not making any water and it did not seem to hurt them.

The same witness testifies at page 869 that if you want to conserve the natural resources of crude oil and prevent the waste thereof don't drill into it and if you have it would be better to get it out of there while they can; there is a certain amount of waste no matter how you handle oil.

Mr. Trippett states at page 873 that he thinks it hurts a well to shut it in if it is making any water at all. At page [fol. 252] 874 he says he thinks the south wells in the Oklahoma City fields are making water. He states again at page 881 that he thinks there is more waste under proration than without because oil is left in the ground that can never be recovered.

The witness states on page 890 that if he owned a lease from which he could not dispose of his oil although his neighbor could he would leave his in the ground. At page

901 he says he can sell his full production without causing any waste of crude oil.

At page 921, Mr. WILLIAM A. SPRINGALL, a representative of the M. K. T. Rd. Co. says if they were permitted to handle as much oil over their road as they might they could handle it without any waste of oil.

Mr. E. W. JONES, testifying at page 915, says that it is not the desire of any operator in the Oklahoma City pool or any other pool in the state of Oklahoma to waste crude oil; we naturally would not waste it and if run to full capacity there would be no waste; I would just produce and sell the amount of oil that I could sell; as a matter of business or enterprise and judgment, we would not permit it to be wasted, as a matter of economical waste we would not do it, or as a matter of physical waste we would not do it; every operator that is honest with himself will produce only the amount of oil that he can sell. At page 946 he states that he has heard a lot of them say that they would produce it right on the ground but "I have been operating a long time, and I have never seen it done deliberately."

At page 949 Mr. Jones says that it has been the general opinion of operating companies in the oil business in every field I have ever operated in, and I have operated in a number of them, that to shut in a well completely has been known to kill wells entirely; neither I nor any other operator in the Oklahoma City field knows "what the effect is to shut it in;" he says: "I know of one well in Texas that came in for 25,000 barrels per day, they opened it to fill their tankage and shut it off for additional tankage, they shut it off and opened it, and it has never produced a barrel of oil to this day." He says the pinch in is the recognized, modern and better way to do it because it keeps the channels open to the well. p. 950.

Mr. Jones, at page 983, in answer to questions asked by Commissioner Capshaw, said "I operated in Seminole and Bowlegs and Little River, and all of the fields of recent flush production in Oklahoma and I have not seen any wastage of oil since the days of Spindletop and Smackover and some of those big flush fields in Texas." And again at page 985 he states "I never did see any waste (refering to the Seminole fields). I drilled lots of wells there.

So far as physical waste is concerned in Seminole and Little River and Earlsboro and all of those fields, I never saw physical waste there, unless a well got wild, just like the Mary Sudik did." He states further that he had never heard, in his lifetime, of a man anywhere deliberately opening a well and running it on the ground and not trying to take care of the oil. He saw it run on the ground in earthen storage tanks and that was customary in Goose Creek and all through South Texas—they never figured that a waste. He said that would cause a lot of it to go down the creeks when they had a big rain just like storms killing people when you didn't expect it to come.

Mr. W. P. HOSEMAN testifying at page 997 says that where the wells are opened intermittently there is a loss [fol. 253] of from 10 to 20% which is not recoverable—that is, lost forever. He figures (p. 998) that 10 to 20% more would be recovered under the pinched-in method. Shutting in after reaching the oil sand results in wastage over what would be recovered in oil if the well were permitted to flow steadily, even though on a percentage flow. The orders in force result in a direct waste of the available oil underlying the Oklahoma City field, which would be underground waste of 10 to 20%. He says, on page 999, that the cause of the recoverable oil being decreased when the well is shut in from time to time over and above the amount it would be if permitted to flow all of the time although pinched-in is due to the fact that there has been established a pressure gradient reaching out to what we might call throughout the drainage area of the well. There is a pressure gradient. That means there is a release of both gas and vapor from the liquid. When the well is shut in, the area of drainage or the drainage volume has a decreased pressure in it which has to be equalized. That pressure is equalized largely by a continued release of both gas and vapor from the liquid, and the release of that gas and vapor, which would otherwise have remained there and kept the liquid in a state that it would flow relatively faster, is the cause of the loss in his judgment.

The witness, after having shown a wide and thorough research into the Oklahoma City field conditions, states on page 1001 "it indicates clearly a very rapid rate of decline in the rate of production of the average producing well in

the field." He says it indicates a material waste or loss otherwise recoverable oil and gas. He says the average decline of the average well from Dec. 30, 1929 to July 28, 1930 was from 9,323 barrels to 1,403 barrels which is abnormal and was caused in his opinion by improper completion and operation.

At page 1038 of the record, the witness states that he is convinced there would be a larger ultimate recovery of oil if there were a pinched-in flow rather than an intermittent. He states his opinion at page 1048 on the effect of the proration method of producing oil in the Oklahoma City field to be that the producing properties have been injured in that they will never yield the ultimate that they would have yielded. He says "my understanding of waste would indicate that it constitutes waste."

The witness states at page 1054 that they ran oil to earthen storage in the early days because they didn't know the results and it was sold on a different basis. He testifies that oil was run to earthen storage in the Smackover field in Arkansas.

At page 1057 the same witness states there would be from 1,500 to 3,000 barrels more per acre recovered if the wells were properly completed and properly operated. About one half of the loss is due to improper operation "under proration." At page 1090 the witness states that if one man were allowed to flow his well wide open and others were required to keep theirs closed on account of marketing conditions there would be a disproportionate taking and a loss in ultimate recovery under the same conditions which would constitute underground waste. He states the same thing again at page 1095.

Mr. Hoseman says at page 1104 that he has never heard of any one who purports to open up wide the wells in the Oklahoma City field, nor of any waste being committed in other fields, nor of any limitation if the transportation facilities. He states further that he knows of no reason why production in other fields should be lessened or restricted, nor of any reason why any good would be accomplished by such a proration order.

[fol. 254] The witness states again at page 1122 that he has never heard of any one who has insisted upon or advocated a wide open flow in the Oklahoma City field except loose talk.

At page 1146, Mr. CHARLES W. WILKEY says that the experience he has found from association with men that have been dealing in the oil game for 25 years or longer is that a well that has been shut off will cause the well to decrease in production. He says further at page 1151 that shutting down the wells caused a material decrease in production.

Mr. J. R. MCWILLIAMS, testifying at page 1175, states that he does not think the operation of the proration orders has caused a decrease in the ultimate recovery of the pool. He states that with higher overall pressure it is logical to assume that it would produce more oil from the field as a whole than it would if we had no proration orders.

The same witness states at page 1180 that the head of gas which has accumulated while the well is shut in and must blow off before any oil can be produced causes a loss of oil—which is lost as far as the oil production is concerned.

Mr. McWilliams states at page 1194 that the production would have had a higher recovery under the pinched-in flow than under the intermittent time flow which would be relatively true in the future. Again at page 1200 he says that on account of the intermittent flow method in operation those wells there has been a considerable loss in ultimate recovery. He states at page 1206 that if you wanted to get the largest percentage of ultimate recovery from the wells you would take into consideration the different conditions existing in and about the well and then govern your operations accordingly; as far as he knows none of the wells did run wide open.

The witness states at page 1207 that if the Oklahoma City field were allowed to flow wide open in his judgment it would cause underground waste to occur; market conditions would cause underground waste if the wells were wide open and an operator could not dispose of all of his production in the ordinary channels of commerce.

McWilliams testifies that he was in the Smackover field (p. 1208) and that there was a very big loss there (p. 1209), that the tanks were made of sand, they would wash out and absorb lots of oil. Earthen storage was used generally and conditions were such that there was a very high percentage of loss that took place about 1924 or 1925.

The witness states, at page 1212, that future underground waste could be eliminated by casing the well properly, pinching the well and proration. He says they might stream some of it off into the Mississippi River which would entail a loss and that to open this field (Okla. City) up would cause a terrific underground waste. He states at page 1213 that if "we" get 25% of our oil in the Oklahoma City pool we will do well while in Seminole they think they have gotten 40% of the recoverable oil. Again at page 1216 he testifies further that they will do well to get 25% of the oil and therefore we waste 75% of the energy and that is really only a small proportion of that 75%, a part of the energy can be saved by putting it on a percentage run rather than on an intermittent flow.

Mr. CHARLES JACOBSON testifying at page 1223 states that the company he is connected with, Barnsdall, operates in [fol. 255] the Osage and Seminole pools; that they have 93 wells in that locality and that there is no waste of crude oil in the way they are handling them; and at page 1224 he says they can control the wells so there will be no waste. At page 1225 the same witness states that they are using no earthen storage and does not know that they have ever used any and that he knows of none being used in the Osage or Seminole fields. He says further that he knows of no one "that is so operating a well to cause physical waste," nor of any operators who are operating in a way not modern and up to date in handling crude oil. He says he can cite this Commission that no waste is occurring that ought to have its attention, and that that is true in the Osage Nation.

Mr. CHAMPLIN, testifying at page 1235, says there was no waste in connection with the flush production in the Garber field. He says at page 1237 that they didn't open their wells up and let it run out on the ground because they did not want to waste it, that they have better sense. He says "I don't think they would any more open up their crude and let it flow out than they would open up their pocketbook and throw their money away." He states at page 1238 that proration in the Garber field would not in any way tend to reduce the waste of crude oil nor tend toward conservation, having in mind the ultimate recovery.

The witness states at page 1245 that as far as his experience and observation goes in the Seminole pool there is no waste of crude oil over there in any way. At page 1263 he says he knows of no waste of crude oil being committed in the Oklahoma City field nor of any waste being committed in connection with the production of crude oil anywhere in the State of Oklahoma. At page 1264 he says shutting in a well is very injurious; that wells are sometimes destroyed or lost by shutting them in and keeping them shut in.

Mr. Champlin says at page 1270 speaking of the Deaver pool that it can be produced at 100% of its possible production without waste.

At page 1291 the witness states he has heard of earthen storage but not lately, not in his time; that he doesn't think anybody would put it in earthen storage. He states at page 1292 that he has seen oil in earthen storage in the Beggs field but that was caused by a well coming in for a large amount and they were unable to take care of it so they temporarily put it in earthen storage and withdrew it as soon as they could get a pipe line into the field. He says he doesn't think that would be done in this field (Okla. City); 10 or 15 years ago they were not as well equipped to take care of producing wells as they are now; they didn't have control gates and often wells were brought in for a big production when they were not expecting it and the oil would go to waste.

The witness states at pages 1301-2 that he is in favor of producing the wells wide open; that he thinks that is an economic way to produce oil and will not result in underground or surface waste; that there can be no underground waste. He says at page 1314 that he wants to commit no waste of crude oil and will not; that if a person did not have the market or could not sell his oil he would shut it in; that they don't have to waste it.

Mr. William H. Atkinson, testifying at page 1341, says that in his opinion shutting in the wells under the time [fol. 256] plan does not injuriously affect the wells, that is the sand wells in the Oklahoma City field; some wells might be making water and it would hurt them and that in certain conditions it would pour water in and hurt the other fellow; it would pull the water in and in time affect the whole field, particularly the North and where he is interested (p. 1342).

Mr. JOHN FULLER, testifying at page 1347, says "beaming down the well—and this is general in every sand in the field, additional back pressure on the well increasing the gas-oil ratio would thereby reduce the ultimate recovery"; again at page 1351 he says "for the purpose of the largest ultimate recovery, I believe that intermittent flowing is better than pinched in."

Mr. WILLIAM H. ATKINSON, testifying at page 1357, says if the proration were lifted he would probably run to open tanks, earthen storage, closed storage, or anything else he could get; at page 1358 he says he doesn't know of anyone doing that now—because they prorate it; in the fields that are not prorated nobody is letting their oil run to waste but with the Oklahoma City potential they would.

Mr. C. C. CARLISLE, testifying at page 1385, says he has seen indications of opening up wells and letting them run out on the pra-rie down the streams, or into earthen storage but not recently; that the Prairie Oil & Gas Co. does not do that intentionally; that improved methods have been developed to prevent a wasteful flood of oil; sometimes they cannot control them but they do as soon as possible.

In the testimony before the Corporation Commission in Case No. 10,326-13 relative to amending order No. 5292 so as to shut down the Oklahoma City field until those wells which are under-produced catch up with those that are even the references to waste will be found on page 115 where Mr. Franklin testified that to force the operators to take any price for oil would result in great economic and actual waste; and on page 202 where Mr. Smith testified that to shut the wells in for a period of from 60 to 120 days would injure them materially, that is that the eventual recovery of oil would not be as great as it would otherwise, so that instead of preventing waste it would result in actual underground waste; and at page 206 where the same witness says that the wells which they compel to shut in will be materially damaged, and again at page 214 he says "in my opinion, proration has injured the field"; and at page 220 that the proration orders shutting in these wells at various times has materially damaged the wells which has caused a material loss of oil that cannot be recovered.

[fol. 257] Defendants-appellees' controverting abstract of the testimony taken before the Corporation Commis-

sion as to waste was in a large part in the exact words of the witnesses; and same being now reduced to narrative form, is as follows:

RAY M. COLLINS (p. 65) qualified as a producer of oil, in actual control of producing properties in Oklahoma since 1904, and the umpire of the Corporation Commission under the present and previous proration orders. After giving figures as to production and potential and on other matters, he testified that, speaking in a general way, the tankage of oil in the United States is approximately full; that if crude oil is permitted to be produced without restriction under the conditions of demand and potential which he gave, then, from his past experience he would say there would be actual waste of crude oil. My reasons for making this statement are that I have had production in the Cushing pool and other new pools where there was an over-production, and at that time we let it run down the creek; we could not take care of it, and our neighbors were running theirs through the pipe lines. There is no considerable amount of available tankage in the State of Oklahoma. If there is no steel or wooden storage or no appreciable amount thereof in which oil can be stored, and if crude oil is permitted to be produced in Oklahoma without restriction, taking into account the figures as to market outlet, market demand and potential which I have given, it is a necessary result that oil must either go into earthen storage or be entirely wasted. In most cases oil that is put into earthen storage is lost anywhere from fifty to ninety per cent, due either to evaporation or the oil going down through the soil, and nine times out of ten a rain coming and washing away your dykes. If the Commission should see fit to find that a proration schedule was necessary in order to prevent waste and one producer in a pool was permitted to produce a higher percentage of his potential production than another producer, it would simply mean that he would get the drainage and the other fellows would lose a certain amount of their oil which they would never be able to recover. Oil in Oklahoma is commonly produced from what is known as a sand formation, although there are some lime formations, but in every instance the oil and gas are moveable or migrating fluids. There are not sufficient transportation facilities in the Oklahoma City pool to take care of

the total potential of the pool if the wells were allowed to be opened up. I believe at the present time the total pipe line outlet, not referring to market demand, but to the capacity of the lines is about 180,000 barrels daily. There have not been considerable shipments by tank car or other means than by pipe lines from the Oklahoma City pool to date. With a potential of 2,800,000 barrels and a possible outlet of 180,000 barrels, even if supplemented by railway and taking into account the possible refining capacity at Oklahoma City, it would not be possible for the potential production of the Oklahoma City pool to be taken care of and transported to the refining markets.

With reference to proration in the Osage Indian reservation, referred to at page 2 of the plaintiffs' abstract, the following is found at page 179 of the testimony:

"By Commissioner Hughes: This Commission has no jurisdiction over the Osage Nation. Of course, it could ask the Secretary of the Interior to go along and prorate the proposition.

"Mr. Cooper (of counsel for a protestant): I quite agree with the Commission.

By Mr. Cooper:

"Q. Does that apply also to restricted Indian lands outside of the Osage reservation?

[fol. 258] Commissioner Capshaw: You are really asking a legal question here that the Commission is not prepared to answer. If the Commission has power to prorate the Osage or any other restricted Indian lands, if they make a proration order they will make it apply to them; and if we don't have the power we won't. If we don't have the power we will probably ask the Secretary of the Interior to go along with us in the order."

Victor H. Smith, called as a witness by the opponents of the order, testified in addition to the matters set out in plaintiff's abstract, as follows (p. 270 of the transcript):

"A. I don't believe there has been any refinery closed down as a result of proration in the Oklahoma City field. * * *"

Mr. Smith, after testifying that the result of lifting proration would probably be a drop in the price of oil, stated (page 272):

"These little boys with their 5 or 6 wells, I don't know what in the world would happen to them. There are more of these than all the refiners in Oklahoma. I think if oil goes to 50 cents the big companies will buy all these little wells and put it in storage—buy all the oil they can get. They have done it in every other commodity when the price goes down low. They provide storage and before it goes to 50 cents they will probably build a lot of tanks to put it in. I think it is natural to expect that they would do it, but there would be a waste in the storage of oil in steel tanks or earthen tanks."

There always is. At page 295 he testified that if proration were lifted, the producer who had no pipe line connections and no refinery could find a market for only a limited amount, and there is no question but that the integrated producer would get a disproportionate amount of the oil.

George Dye, in addition to the testimony on page 6 of plaintiffs' abstract, testified that undoubtedly there would be disproportionate taking by some operators as against others; there would be some operators in the field that would not be able to run their oil at all, and their neighbors would be running their wells and the result would be that one operator would take oil that would come out from under another operator's lease.

E. B. Reeser testified that he was president of the Barnsdell Corporation, owning both refining and producing companies in practically all of the oil producing states, and that he was president of the American Petroleum Institute, having a membership of about five thousand, and whose function it was to collect statistics in regard to the production, sale, and disposition of crude oil and its products, and that he had been engaged in the oil and gas mining business about 37 years. After giving various figures as to consumption, demand and production, Mr. Reeser testified that there is decidedly an excess of production over the reasonable market demand for oil in Oklahoma, and that in his judgment if there were not a proper proration order by the Commis-

sion, a condition of actual and economic waste would result because the markets which can be reached by Oklahoma producers or refiners is limited to the territory where other producing areas exclude it, "and we know by our efforts, that the amount suggested in the order, 530,000 barrels is the maximum that can be marketed." With the potential figures that have been given here, and that being the maximum that can be marketed, if production were in excess of reasonable market demands a condition of waste would undoubtedly follow. Putting oil in steel tankage is waste. "I think they have arrived at the day where every commissioner should prohibit putting additional quantities of oil in steel or other storage."

[fol. 259] C. C. HERNDON testified that he is Vice-President of Skelly Oil Company, engaged in the refining and producing of crude oil, and chairman of the Oklahoma Proration Committee of the Mid-Continent Oil and Gas Association, and that he had been engaged in the oil business since 1914 (pp. 397-403) and he states that in his judgment if there were not a proration order in effect or one were not continued in effect, there absolutely would be actual waste of crude oil in the State of Oklahoma, and that he considers such a waste imminent if no such order be made; and that the potential production of oil in the State of Oklahoma is largely in excess of the reasonable market demands therefor.

A. V. HOENIG testified (p. 456) that he is Vice-President of the Indian Territory Illuminating Oil Company, engaged in the production of crude oil in Oklahoma, and has been in the oil and gas mining business for about thirty-three years, and has been in charge of the Oklahoma City field production for the I. T. I. O. since the inception of the field, and that he does not believe the full production of the Oklahoma City field would be produced without waste and that in his judgment a continuation of some sort of proper proration is necessary to prevent waste in said field. He testified that the basis for the conclusion is that "to produce this field without restriction or proration would result in a very material waste of oil and gas." There are not physical facilities for storing oil in the field sufficient to take care of the production, and there is not a demand in

the field for most of the production. The demand and the facilities together are not sufficient to take care of the production.

OTTO BRADFORD (p. 531) testified that he is the umpire for the Oklahoma City pool and has been engaged in the oil and gas business ince 1913; that in his judgment the Oklahoma City field cannot be produced at its maximum production without physical waste because there is no way for a good part of the oil to be handled. "No way to get it out." He stated that he thinks that if the wells were all producing, it would necessarily result in earthen storage or actual escape down the streams. Practically all storage in the Oklahoma City field is full at the present time.

J. R. TRAVIS, a witness called by the opponents of the order, in addition to his testimony as summarized in the abstract of plaintiffs' testimony, testified (p. 580): The whole trouble is not proration—it is drilling. At page 630 he testified:

"Well, to open this field up out here (the Oklahoma City field) in my judgment, with the heavy gas pressure, to open them entirely, I think you are hurting your wells; to pinch them in I think you are helping your wells; to let them flow some all the while."

A. V. BOSWELL (considerable of whose testimony is abstracted by plaintiffs) claims to be a hydraulic engineer, petroleum engineer and mining engineer (p. 708). He testified that he was not a graduate of any school at all (p. 749); that he has a small interest in one well in the Oklahoma City field but was not the operator of the property on which it is situated; that he had not operated any property in Oklahoma in the last ten years (p. 754); that he did not have any client employing him as a petroleum engineer and that he had not had any such client within the past ten years (p. 756); that he thought under certain conditions paraffin would clog up the "pours" in a well, but that he did not know the temperature at the bottom of any well in the Oklahoma City field and was sure that the "melting temperature of paraffin" is 212 degrees. (P. 758.)

JAKE L. HAMMON (p. 810) made a statement voluntarily upon his own account, saying that he has individual production in five fields in Oklahoma; that he represented the Crude Oil Producers Association of Southern Oklahoma, which represented a total of 2,658 wells in 13 fields; that the association had had several meetings and that he appeared for it. He testified (p. 810) that if this proration [fol. 260] plan is put into effect he believed it would save their wells from waste, and if not, economic waste will surely result because the small producer cannot afford to build steel tankage for his oil; that the cost for the average tank for the average small producer is prohibitive. "Our production will be wasted." He stated that if we are put under proration we are satisfied as "being the best solution for our difficulty—to prevent shutting in our wells or such other condition of waste as would take place." In view of the circumstances and conditions prevailing in the oil business, the proposed order is about the most equitable and fairest proposal that could be made.

W. P. HASEMAN, a witness for the opponents of the order, testified (p. 1077) that on an average and speaking from the standpoint of the ultimate recovery of oil from a pool, the very worst method by which it could be operated would be to open all of the wells all of the time. "I think production data will support that." I mean by that to leave the wells wide open. The best method on the average, of producing from the pool as a whole, having in view the ultimate recovery, would be to operate the wells all of the time, but under a back pressure, or as is commonly known, a pinched-in method. On the average it is true that a method of opening all the wells in any pool and allowing them to flow wide open will result in a loss in the ultimate recovery. That loss constitutes underground waste. At page 1090 Dr. Haseman testified that if some of the wells in the field were permitted, by reason of marketing facilities, to flow wide open, while others were required by the same conditions, to be closed, either wholly or partially, there would be a disproportionate taking between the two classes of wells. Under those conditions, an underground loss in ultimate recovery would occur. That would constitute underground waste. If the proration orders were lifted and the field (referring to Oklahoma City field) were allowed to

operate without restriction, and either letting the wells flow wide open, or such of them flow wide open as had a market outlet, and others remain closed in, there would be a loss in ultimate recovery over what would be recovered by a proper method of operation. This would extend through the pool as a whole, and would result in an underground waste in the entire field. He further testified (p. 1119) the wide open method of production is the most wasteful.

CHARLES W. WILKEY (some of whose testimony at pp. 1146 and 1151 plaintiffs have abstracted) testified (p. 1147) that his experience in the oil business was from association with others; that he was with a Mr. Page for eighteen months in the production business, operating pumping wells, working on a lease at Sand Springs. That you shut in a well for three or four days and it will show a decrease in production. He stated that he was with Marlin & Company in Borger, Texas, and that his only experience was working by the day. He further testified (p. 1152) that no man on earth would know what would be the cause of the loss of pressure in the Wilkey-Anderson wells or any of them; whether it was the result of shutting them in under proration orders or some other cause, particularly the fact that a large number of wells in the same gas bearing horizon have been running open. He testified:

"Q. Now, do you think that you are really, from what you know of things, honestly do you think you are competent to say what the cause of that loss of gas pressure was?

"A. Well, as I say, I don't believe that no man could intelligently say what was the cause of it,"

J. R. MCWILLIAMS testified that he is a production engineer, a graduate of the University of Michigan, had about twelve years' experience, is employed by Skelly Oil Company and has been in close contact with the Oklahoma City field since September, 1929, and has made studies of the various wells in that field. Referring to the Wilkey-Anderson well about which Mr. Wilkey testified, he stated that there had been gas withdrawals in the neighborhood thereof, and a very rapid decline in gas pressure. That said decline in gas pressure was not due to a shutting in of the wells under the proration orders. He further testified that he did not think, speaking of the pool as a whole,

that the operation of the proration orders or the production under the proration orders had decreased the ultimate [fol. 261] recovery from the pool. When asked why he did not think so he testified:

"Q. Why do you think it has not?

A. Well the customary method without any order—any proration order in that area, would have been to, after the discovery well, was to start some offset locations. While these offset locations were being drilled the discovery well would have produced wide open and would have caused a depletion in the pressure in the surrounding area until the time when the offset wells were drilled in.

At that time another line, or two or three lines of wells would have started around the center, and the result would be that the center group of wells would draw the energy, the gas energy, for a considerable distance, so that when the wells which came in, if there was oil in the same horizon they would find a depleted sort of energy.

Consequently the wells drilled at a later time would produce less oil than they would have had it been possible to have drilled them at the time of the discovery well. Under proration it has been possible to drill the field and find a higher average of the pressure that would have been the case without proration. With higher over all pressure it is logical to assume that it would produce more oil from the field as a whole than it would if we had no proration orders.

Now there is one other reason that seems quite important to me, and that is, proration in my opinion has held back water encroachment. The lime area had bottom hole water, while the sand area has edge water. That is, we can drill through the sand in a great many cases and do not find water in the bottom of the sand.

If you continue drilling through the sand on down to maybe the Arbuckle lime, you will find water, but you don't find it in the bottom of the sand, but the water is found on down in the slope. Now, the great plague of the oil business is the salt water encroachment. Whenever you can hold back salt water you can feel pretty sure that your production is going to keep up, because when salt water hits a well there is a very rapid decline.

Now, by proration we can deplete the filter of its energy slowly. If you deplete its energy rapidly the water will filter in, and ultimately when it reaches the well, and if it breaks into the well, it is very difficult to ever stop it, and when it filters in its pockets big volumes of oil. So by proration we hold this water back.

Now, time proration, it might seem, would not hold the water back, but if you will consider what might be happening at the bottom of the well. You open up a well 12 hours, 24 hours, 36 hours, or whatever the order happens to call for. You create a lower pressure at the bottom of the well, and this pressure diminution you might say goes back a distance in the sand, but under the short open period, even up to 36 hours, I don't think that pressure can extend—the effect of that diminution of pressure can extend at a very great distance.

[fol. 262] If you will consider that there is a big wave of diminution started at the well. As it gets out to the water, you might say that there is a lessening down at the water encroachment that can under my opinion approach that well. Therefore, I say that if proration has held back water encroachment, that is the biggest single thing that you can do to increase your ultimate yield.

The rule is that in many cases when we open a well on time proration, that the well produces a head of gas, although there are many many exceptions to that, and assuming that it does produce a head of gas, it follows as a line of reasoning that as it produces gas and does not produce oil, that it should have produced oil, and therefore there is a wastage, but in my opinion the wastage would have been many times greater had we allowed this well to flow open.

So I believe I can say to this Commission in my opinion that it was much better to have closed the Oklahoma City wells on time proration than it would have been if we had let those wells flow wide open."

Mr. McWilliams testified further (p. 1179) that gas will travel a mile through the gas producing sand. He testified (p. 1183) that he believed that a percentage flow was better than intermittent production. At page 1207 he testified

that he is very firmly convinced that there would be an underground waste in the Oklahoma City field if the wells were allowed to be flowed wide open; that underground waste would result if the market conditions were such that the full open flow of the field could not be had and the conditions were such that an operator could not dispose of all of his production in the ordinary channels of commerce.

Mr. McWilliams further testified (p. 1211) that he had had experience in surface waste in fields where there was more oil produced than there were market facilities for it; that he had been in the Smackover field (in Arkansas) in 1924 and 1925 during its development, and that there was as much oil run into the pipe lines as they could handle, and the rest of it went into storage and by far the largest bulk of the storage was earthen storage and that there was a very big loss there. That the earthen storages were not confined to any one operator, but it was rather general; that the big pipe line companies bought oil and stored it in earthen pits. "At least I know of a tremendous tank farm that must have had a million barrels of oil that belonged to a Company that operated a pipe line out of the field." There were many operators in that field. He stated that in his judgment a like condition or a similar condition would result in the Oklahoma City field if it were opened up. Future underground waste in the Oklahoma City field could be eliminated by casing the wells, pinching the wells and proration.

CHARLES JACOBSON testified (p. 1218) that he is superintendent of production and drilling of Barnsdall Oil Company; had 19 years experience in the oil business and has under his charge at the present time approximately 500 wells. That in addition to the wells of his own company he had observed the properties of other companies throughout the fields in Oklahoma; that many of the wells under his control make salt water and that he could not see that it hurt the wells to either pinch them in or shut them in. "In some cases it is a benefit to them." Either pinching in or shutting in, according to my experience, does not have any effect so far as salt water is concerned, on these wells. "I can cite several instances. I think it occurs with all operations. You go in on a fishing job, a salt water well,

it will last thirty days and in a week or so you get your well back; it is about the same as it was before. When [fol. 263] you get *get* the salt water out, the well will come back in the same general way. "I might *sight* the case in the St. Louis field. Large quantities of salt water. Just recently, we shut down for a period of fifteen days and were making 600 barrels of water and 300 barrels of oil. Fifteen days after the shut down we had 412 barrels of oil and 760 barrels of water." I have noticed no ill effects whatever with wells of small production, say ten to fifty barrels, from shutting them down.

H. H. CHAMPLIN (p. 1236), in addition to his testimony referred to in the abstract of the plaintiffs, in testifying with reference to steel storage stated that it is the most approved method. "There is some waste." In speaking of the handling of the Garber field in which he had testified there was no waste, the witness said that the production was taken care of in storage and by pipe lines and often wells were pinched in and held in abeyance until facilities were great enough to take care of the production. At page 1263 he testified that he would hate to say one way or the other as to what the effect of the proration orders would be upon the amount of crude oil that can be ultimately recovered from any of the fields. Under proration it certainly would prolong the life of the fields, but there is so much oil in the fields, "I am of the opinion that in the long run some one will get that oil. It may not be me, but somebody will." Explaining his ideas of waste, Mr. Champlin at page 1303, testified that there would be no waste if a pool were operated so that it would only recover one-half of the oil that might have been recovered under other operating conditions; that there would be a loss of recovery but not waste. "You cannot waste anything you do not have; that you do not possess." "Well, I said there could be no underground waste of oil because there can be no waste of something you do not possess." At the hearing on November 20, 1930, Mr. Champlin (record of said hearing, page 35) having been asked as to his recommendations, testified:

"Q. If you did not have your wells in, would you still make that recommendation??

"A. I would let them flow wide open to the capacity of the pipe lines to take them out of the field. I would make the pipe lines take the oil proratably."

L. W. WINKLER, owner of an interest in a company having a well in the Oklahoma City field near which were wells of others, testified with reference to the amount of production from the well of his company that it showed an increase in production on two occasions, and that on both occasions the neighboring wells were closed a day ahead of those of his company, and he stated: "any time we begin flowing our wells the next after these offsets are closed we get our production quicker, and we don't have to have them open so long after that to get onto normal oil." He stated that this absolutely indicated that there was some connection between the wells of his company and the offset wells.

WILLIAM H. ATKINSON (p. 1341) testified that he is a graduate of the University of Oklahoma in petroleum geology and has been engaged in oil field work for 14 or 15 years; that he is interested in 28 wells in the Oklahoma City field, owning a half interest in the leases on which they are located; that he owns a royalty interest in 100 wells therein; and that he has made a study of the Oklahoma City field since its inception, working at it from 12 to 20 hours a day. He further testified that he does not think the shutting in of wells under the time plan under the proration orders has injuriously affected the wells; that he had made some studies to determine whether or not they were injured; that he had taken the gas-oil ratio and production of every one of his own wells and a great number of others. At page 1357 he testified that if proration [fol. 264] were lifted and the field opened up and his neighbors had facilities whereby they might dispose of their oil and the market demand was not such that he, the witness, could dispose of his, he would probably, until the Corporation Commission stopped him, run his oil into open tanks, earthen storage, closed storage, or anything else he could get. He stated that he would not want to violate any law, but at the same time "I realize that oil is fugacious, or very much migratory. I would not want to sit idly by and let them take it like that. I would have a little fun as

I went along." He stated that his net potential production in the Oklahoma City field, as near as he could estimate it, was 150,000 barrels per day. He testified:

"Q. Suppose then, a man like Mr. Champlin who has testified here, has a legitimate offer, say for his oil, and he is using it for that offer and legitimate purpose, and because of that fact, if you had wells nearby there, would you open those and let them run, regardless of whether you could sell it or transport it?

"A. I certainly would."

O. C. CARLISLE (p. 1381) testified that he is a production engineer, a graduate of Washington State College and engaged since 1901 in engineering work; that his present occupation is recording the production of oil for The Prairie Oil and Gas Company in Oklahoma, Texas and other fields. That the data had been taken over approximately 51 districts, and that many of the wells upon which the data was taken made salt water. He stated that this data shows that the intermitten complete shutdown of wells does no injury whatever so far as his company could tell, and in fact in most cases the production was slightly increased.

J. R. MCWILLIAMS, recalled as a witness at the hearing before the Commission on November 20, 1930, testified that he thinks it possible after a field has been produced, as the Oklahoma City field has, and observations taken such as have been taken in that field, to specify a rule of production which will result in a greater ultimate yield in a pool as a whole than would be "under a wide open production plan." He stated that he thinks the proration orders are beneficial to that field as a whole so far as the ultimate yield is concerned, in view of the lease ownership and the amount of drilling that has been done in said field, and that he thinks that proration orders will show a greater recovery of oil then if no proration orders had been made by the Commission.

JOHN FULLER, testifying at the November 20, 1930 hearing (page 72 of the record thereof), who had previously testified that he was a production engineer and in charge of production data for the I. T. I. O. in the Oklahoma City

field where they have some 325 to 330 wells, and after having testified as shown in the plaintiffs' abstract of his testimony, said that he believed the ultimate recovery in the Oklahoma City field will be greater by reason of the proration orders than it would have been if no proration orders had been made. At page 87 he testified that he is sure that a method of proration of the oil that may be produced from the Oklahoma City field can be reached which is reasonably fair to the operators in the field and will result in an increased production from the field as a whole over what would be had by a continuous open-flow of the wells, and that, as a matter of fact, his experiences there have proven that the orders of the Commission have proven to be reasonable close "to that ideal condition."

(End of Appellants' abstract of testimony before the Commission.)

[fol. 265] At the insistence of defendants-appellees the testimony of the following witnesses introduced on their behalf by affidavit is included in this narrative:

[fol. 266] The affidavit of Ray Lyman Wilbur, introduced on behalf of the defendant-appellees, states:

That he is the Secretary of the Interior, and the Chairman of the Federal Oil Conservation Board, a Board constituted and appointed by the President of the United States on December 19, 1924, and consisting of the Secretary of the Interior, the Secretary of War, the Secretary of the Navy, and the Secretary of Commerce.

The duty and purpose of this Board includes the gathering and compiling of information relating to supply and production of oil and gas and the intelligent conservation and use of the oil supplies of the United States. In constituting this Board, the President of the United States commented upon the excess production of oil in the United States, i. e., the production of these minerals in larger quantities than required by current needs, either for use or reasonable storage.

In a written report made February 25, 1929, the Board stated to the President—"The excess production commented upon by you when you created the Board in De-

ember, 1924, unfortunately continues." The data secured by and available to this Board indicates that up to this date the same condition of excess production exists; that this surplus production and resultant waste of these resources, both economic and physical, would at this time be very much greater were it not for conservation measures adopted and enforced by various State oil and gas commissions, voluntary reduction or cessation of production by oil producers and conservation measures adopted and carried out either by agreement or otherwise by the Department of the Interior. The policy of the Department of the Interior adopted in March, 1929, and still being enforced, is to withdraw the public lands from issuance of new prospecting permits under the general leasing law and to grant extensions of time in the case of permits issued prior to the adoption of the policy on express condition that no drilling be done for periods of from one to two years. The Kettleman Hills Oil Field in California, the largest and potentially most productive field in which the Government owns a large area of public lands, has had my personal attention and I have made several trips to the field in the effort to postpone drilling and conserve the oil and gas therein.

An agreement for the deferment of production in this field was negotiated, signed by the permittees, lessees, and private owners in the field, and myself, and is now in force. The policy now in effect with respect to the public domain is the outgrowth of the general excess production of oil to the extent of economic waste, well known to the public. The President has publicly expressed his desire to conserve the oil underlying the public domain for the general benefit that will ensue as well as to prevent extravagent waste. It is an administrative policy which as an economic measure in the handling of public lands lies in the judgment of the officers of the Executive Department. Its purpose is to protect both the Government and the public.

The coal deposits and phosphate, sodium, and shale deposits of the United States are of such vast extent and so little used that no particular need for their conservation or limitation exists. They are of such nature that little waste is likely to occur in their mining or handling. The reverse is true of deposits of oil or gas. The latter minerals

have long been regarded as an exhaustible resource in widespread use and demand and particularly subject to waste or destruction. A gas well brought in and uncontrolled may daily waste enough fuel gas to supply a large city's every need. Oil wells have been known to waste [fol. 267] thousands of barrels when not subject to proper control. Even when saved and stored in tanks or reservoirs, there is a substantial and continuing loss of the more valuable elements due to evaporation. Economic as well as physical waste, was and still is a characteristic of the oil industry.

It is a well recognized fact, proven by statistics, collected and published by Governmental agencies, including the Federal Oil Conservation Board, by the oil industry, itself, and others, that the past year or two have witnessed a period of great excess production of oil and gas. And in the judgment of the Executive, the public interest as well as the good of the industry demanded a temporary suspension of indiscriminate prospecting and producing from the public lands.

The Federal Oil Conservation Board has used and is using its best endeavors to further the conservation of the national oil and gas resources and to discourage their overproduction and waste. Its authority and usefulness have been recognized by Congress through the appropriation annually since 1924 of money for its use and support. Conditions existing at the present time with respect to the production of oil and gas are matters of public knowledge and show that—

1. More oil was and is being produced in the United States than is required for current needs, emergency purposes, and reasonable storage.

2. Petroleum producers cooperating with the authorities in the various oil producing states, with the Federal Oil Conservation Board, and with the Secretary of the Interior, have entered into arrangements for the curtsilment of production of oil from certain fields on privately-owned and public lands because of the present oversupply of oil.

[fol. 268] The affidavit of George Otis Smith, introduced on behalf of defendants-appellees, states:

"That I was born on February 22, 1871, that I was graduated from Colby College, Maine, in 1893, with the degree of A. B., and from the same institution received the degree of A. M. in 1896, and that I received the degree of Ph. D. from Johns Hopkins University in 1896, with geology as my major subject:

"That from 1893 to 1906 I was engaged in geological work in Michigan, Utah, Washington, and New England; that I was an assistant geologist and geologist of the United States Geological Survey, Department of the Interior, from 1896 to 1907, and that I have been the Director of the United States Geological Survey, Department of the Interior, since May 1, 1907, except from September, 1922, to September, 1923, when I was a member of the United States Coal Commission; that I am a member of the Geological Society of America, of the American Association for the Advancement of Science, of the American Institute of Mining and Metallurgical Engineers (Pres. 1928-29), of the Washington Academy of Sciences, of the Mining and Metallurgical Society of America, of the society of Economic Geologists, and of the American Association of Petroleum Geologists; that I am the author of reports on areal, economic, petrographic, and physiographic geology in publications of the United States Geological Survey, Department of the Interior, and also of Numerous miscellaneous papers and addresses related to natural resources and economics.

"That as administrative head of the Geological Survey, a scientific bureau in the Department of the Interior, I am specially interested in the general subject of conservation of natural resources with particular reference to oil.

"That from 1914 to the present I have written many articles and made many addresses on different phases of oil conservation.

"That the general thesis in these public statements has been a plea to stop waste, both physical and economic, by stabilizing production, through voluntary restriction and self restraint, if possible, if not, by State and Federal regulation.

"That I urged before Congressional committees the leasing of oil lands as better protecting the public interest through extending life of deposits over a longer period;

and sat as adviser with Congressional committees framing the Federal legislation of 1920 and amendments thereto.

"That beginning in 1909 I recommended the withdrawal of public oil lands, in aid of and preparatory to legislation and, through the Secretary of the Interior, recommended to Presidents Taft and Wilson the creation of the Naval Oil Reserve.

"That in March, 1924, I was appointed by President Calvin Coolidge as the chairman of the Naval Oil Commission to advise the President on the future supply of fuel oil for the Navy.

"That this commission was referred to in the President's letter of December 19, 1924, creating the Federal Oil Conservation Board as follows:

[fol. 269] " 'To the Secretary of War, Secretary of the Navy, Secretary of the Interior, Secretary of Commerce:

" 'Sirs: It is evident that the present methods of capturing our oil deposits is wasteful to an alarming degree in that in that it becomes impossible to conserve oil in the ground under our present leasing and royalty practices if a neighboring owner or lessee desires to gain possession of his deposits.

" 'Developing aircrafts indicate that our national defense must be supplemented, if not dominated, by aviation. It is even probable that the supremacy of nations may be determined by the possession of available petroleum and its products.

" 'I am advised that our current oil supply is kept up only by drilling many thousands of new wells each year, and that the failure to bring in producing wells for a two-year period would slow down the wheels of industry and bring serious industrial depression. The problem of a future shortage in fuel and lubricating oil, not to mention gasoline, must be avoided or our manufacturing productivity will be curtailed to an extent not easily calculated.

" 'We are not today, however, facing an undersupply of oil. The production of our 300,000 wells is in excess of our immediate requirements. That overproduction in itself encourages cheapness, which in turn leads to wastefulness and disregard of essential values. Oil, of which our resources are limited, is largely taking the place of coal, the supply of which seems to be unlimited, but coal cannot take

the place of oil in most of its higher uses, on land or sea or in the air.

"'For the purpose of giving this responsibility of government in all of its aspects the consideration it demands, I have constituted a Federal Oil Conservation Board consisting of the Secretaries of War, Navy, Interior, and Commerce, to study the Government's responsibilities and to enlist the full cooperation of representatives of the oil industry in the investigation. The Government itself is at present one of the largest lessors of oil lands, and the public domain still includes large undeveloped reserves of oil, so that the administration of oil resources is a practical question with the Department of the Interior.

"'I would express the desire that these conferences may be open and exhaustive. The oil industry itself might be permitted to determine its own future. That future might be left to the simple working of the law of supply and demand but for the patent fact that the oil industry's welfare is so intimately linked with the industrial prosperity and safety of the whole people, that Government and business can well join forces to work out this problem of practical conservation.

"'Last March I appointed a commission to advise me on [fol. 270] the special subject of the best policy to insure the future supply of fuel oil for the Navy. That commission will continue to function in its limited field and might to advantage sit with the Conservation Board in the conferences I expect will be between these four Secretaries directly concerned and the outstanding producers of petroleum. Similarly, the members of the Conservation Board will call upon their technical advisers in the bureaus to contribute to the full discussion of ways and means of safeguarding the national security through conservation of our oil.

"'Very truly yours, (Sgd.) Calvin Coolidge.'

"That when the Federal Oil Conservation Board was organized I was designated by the Secretary of the Interior to serve as his representative on a technical and advisory committee under that Board, and since then have served continuously as the chairman of that committee, the principal function of which committee has been to assist the Board in its study of crude oil supply and demand for

petroleum products; that advisory committee with its membership of engineers from four executive Departments represented on the Board has largely assisted in the preparation of the four reports submitted to the President: Report I, dated September 6, 1926, Report II, dated January 16, 1928, Report III, dated February 25, 1929, and Report IV, dated May 28, 1930, which reports have been published as public documents at public expense under authority of Congress.

"That my connection with the Federal Oil Conservation Board has necessitated a continuous review of current activities of the oil industry, attendance upon technical and commercial meetings of oil and engineering organizations, study and analysis of statistics of oil production, and frequent visits to the principal oil fields of the United States.

"That reports of the Federal Oil Conservation Board have included summary statements of pertinent facts gained in the course of investigations under my direction and have presented specific recommendations based thereon.

"That in Report I (1926), the Board urged (p. 9) 'Better control of the flush flow from newly discovered fields,' discussing this subject more fully on pages 11 and 13 to 20; on page 11, the need of better control of production was thus referred to:

" 'At the initial opening of new fields the gas pressure is strong and the flush flow of wells is very large, rapidly diminishing to more settled production, and the opening of new fields is in most instances followed by a fever of drilling. Due too often to divided ownership in small areas, the drainage of which is threatened by adjacent wells, a rush of drilling leads to enormous flush flows which temporarily glut the market and force much oil into fuel consumption, and, through over-release of the gas, diminish the amount of oil that can be ultimately obtained by flow and pumping.'

"Again on page 17 the condition favoring conservation of supply and avoidance of waste through property control [fol. 271] was discussed as follows:

" 'For a decade, the Cabin Creek field in West Virginia has been an outstanding example of an economical drilling program having a definite purpose of high recovery at low cost and at a rate adjusted to demand. The field is owned by a single company and has been operated as a unit with

the definite purpose of only meeting the requirements of the operating company's refinery and that for the longest possible time with crude oil produced at the least possible expense. This twofold aim of maximum recovery and minimum cost was sought through planning the economic spacing of wells and through conserving the gas pressure in the oil-bearing sand. Freedom from the pressure of competition has made possible at Cabin Creek a remarkable controlled production curve for the field, bearing little resemblance to the decline curve of other fields. Last year, for example, the output from Cabin Creek was the same as eight years before.'

"In its conclusion of this report, the Board urged State action in these words (p. 24):

"'State governments should promptly study the economic advantage of cooperative action by landowners and oil operators, looking toward sane development of new fields, and consider legislation authorizing cooperative agreements, under proper safeguards. And State legislation, with the declared purpose of conservation, should be enacted to stop the waste of gas, the loss of its content of gasoline, and the even greater loss incident to reduction of gas pressure in the oil sands.'

"And the Board also endorsed cooperation upon the part of the industry in these words (p. 25):

"'Cooperation within the industry can affect economies all along the line—in development and production, a better balancing of supply to demand, when and where the oil is needed; in transportation, better planning, thus avoiding crosshauls of crude and crosshauls of products; in distribution, less duplication of marketing facilities, which at times even involve an expense equal to the cost of production and refining. Large savings in both production and refining are possible through the general adoption of the best technique already used by the more progressive units.

"'Cooperation within the industry is recommended in both research and action, in discovering the best practice and in adopting it. Field cooperation between neighboring operators in preserving back pressure and reducing the gas factor is an example of practical conservation, or if it is too late to do this, field cooperation can take the form of build-

ing up pressure by artificial means. United and coordinated effort is the method recommended.'

"That in Report II (1928) the Board noted the breaking of all previous records in oil production and oil consumption, with the comment, page 1:

[fol. 272] "'Appreciation of oil conservation as a business policy has influenced the adoption of production methods which, it is hoped, promise larger ultimate recovery, but the one assured and significant fact in the production situation of today is the sharply accelerated rate of drawing upon the underground reserves.'

"That in Report III (1929) the Board commented upon the progress made in the four years since President Coolidge placed upon the Federal Oil Conservation Board 'the responsibility of promoting cooperation between the Government and the oil industry' and noted (p. 1) that:

"'The excess production commented upon by you when you created the board in December, 1924, unfortunately continues. The flow from new wells has more than offset the declining output of old wells; production has even kept ahead of increasing consumption. This excess of domestic supply over a demand which has increased 20 per cent since 1924 is shown by the stocks of crude oil at the close of business December 31, 1928, which amounted to about 485,000,000 barrels as compared with 409,000,000 barrels at the end of 1924, when you called the Nation's attention to the need of safeguarding national security through conservation of oil.'

Later in this report the larger estimate of reserves through discovery of new fields and of deeper sands are mentioned with the comment (p. 2) 'While from an economic point of view these additions to our estimates of the reserves of oil in known fields are gratifying, nevertheless they constitute an increased menace to the industry unless self-restraint continues to be exercised in the exploitation of the newly discovered sands. * * * Storage of oil underground, where nature placed it, is regarded as the best method because it is cheapest and safest,' and on page 3 'Under present conditions, divided ownership in an oil field must involve correlated rights and obligations, and only as these are recognized and lead to voluntary agreements can there

be freedom from economic waste in developing and operating the field. The possibility of unrestrained individual action in what should await regulated community action still remains a menace to the present stabilized rate of production. * * * Plainly, the essential factor in handling underground reserves of oil, admittedly the most economical form of storage, is full cooperation in unit control, whether by voluntary agreement or by State enforcement.'

"That in Report IV (1930), the Board's latest report, recently issued, contains a statistical chart which exhibits the marvelous growth of the industry from 1918 to 1929 and most notable among the items in this supply and demand table, or oil balance sheet, are the yearly additions to the quantity of crude oil and refined products in storage, which amounted to a total of 682,000,000 barrels on December 31, 1929 (p. 4); the Board again admits its need of revision of ideas regarding the supply of oil probably available, but remarks (p. 8) that such revision of estimates does not increase the actual future supply, so that the Board renews its appeal against waste in these words (p. 8):

" 'The purpose of the several conservation measures urged by the Federal Oil Conservation Board is primarily to delay the coming of the day when an impending shortage [fol. 273] of crude oil will cause a radical advance in the prices of the refinery products the public buys. It matters not whether the oil reserves of the United States are five times a billion barrels or twenty times a billion barrels, the supply is limited and cannot be increased. Even the most generous estimates place the date at which our oil reserves will be practically depleted, under present rates of consumption, in the comparatively near future. In the interests of national defense and industrial prosperity this generation should not be permitted to waste this irreplaceable natural product and thus seriously handicap future generations of Americans.'

and notes the degree of restraint already active in the industry, stating (p. 8):

" 'Never before has there been so large a shut-in production. Many well-informed men in the industry believe that if all the wells of California, Texas, and Oklahoma were opened to full capacity the present daily output, large as

it is, might be temporarily doubled. This potential production of oil wisely held in underground storage represents a quick asset that will be immediately available when needed.'

The Board noted the tendency to substitute free storage underground for costly above-ground tankage and commented (p. 2):

"'The spirit of co-operation which characterized the year, and the genuine efforts to maintain a balance between crude production and demand for refined products, through proration and curtailment agreements under auspices of State authorities, undoubtedly held underground a large amount of crude oil, and were, in this respect, helpful influences.'

"That I am convinced by the statistics of production and consumption available that the present daily demand upon the oil wells of the United States is not in excess of 2,500,000 barrels and with the seasonal decreases in gasoline demand now beginning, a considerably lower figure for crude oil demand may be expected, especially in view of the drafts upon tank stocks or crude and gasoline that might be made with the purpose of decreasing carrying charges and deterioration, costs that must be met eventually by either producer or consumer or both.

"That at present, estimates of shut-in production or potential production in excess of needs vary widely, from several million barrels a day when based on short-period tests of the larger flush pools, to the one or even three million barrel estimate referred to in the Board's report (p. 4); the difference of view is not essential, as either figure implies disaster, through a flood of unneeded oil, and it is this fear of waste of an essential resource on a large scale that has led the Federal Oil Conservation Board to maintain its activity in the study of the oil business in its obvious relations to the public interest.

"That production of oil in large excess of current needs involves waste of several types and waste to an extent that makes the problem one of country-wide concern; the waste of oil is both economic and physical, and with this there is unfortunately connected the waste of natural gas, to which the Federal Oil Conservation Board has referred in its [fol. 274] latest report as follows (p. 15):

"'Attention had been repeatedly called to the enormous waste involved in the escape of gas to the air, but since above-ground storage of natural gas is plainly impracticable from the standpoint of cost, many executives, who though in terms of oil, regarded escaping gas as unavoidable waste. Now that this natural resource, produced with the oil, has taken on a commodity value at the well as a result of long-distance pipe lines, opinions and policies have changed. Moreover, production engineers are now pointing out the even greater importance of gas as the most efficient agent in extracting oil from the ground, with the result that it is realized that the prevention of the escape of gas is highly desirable in the practical business of producing oil.'

"That in his capacity as chairman of the Federal Oil Conservation Board and especially as the officer charged with administration of the public lands, the Secretary of the Interior has delegated to me in the past eighteen months the investigation of ways and means of reducing waste in the oil and gas fields in which the Government is a landowner, this assignment having involved no less than five visits to California in the effort to seek to stop in some degree the enormous waste of natural gas in the Kettleman Hills field where the Government-owned lands under permit or lease make up approximately 30 per cent of the field, thus enabling the Secretary of the Interior to exercise some degree of control over operations.

"That, as a public official, my sole purpose in seeking to delay development and postpone production in the Kettleman Hills field has been to protect the public interest, the consummation of an agreement among the Government lessees and other operators in the summer of 1929 having kept this major field, with a potential daily output of not less than 100,000 barrels of exceptionally high-grade oil, from producing daily more than 15,000 barrels for the greater part of 1930, and this self-restraint among the Kettleman Hills operators under this agreement materially contributed to a condition of balanced production in California, and was of even greater benefit to the general public of that State in the notable reduction in the waste of natural gas, which waste even now amounts to hundreds of millions of cubic feet a day.

"That in the light of continued study and frequent contracts with operating engineers, consulting geologists, and others directly connected with the conduct of the oil business, it is my opinion that in order to prevent economic and physical waste of both oil and gas there must be some control applied to oil production, especially of flush pools, that will equitably protect each operator and owner from his neighbors, and that anything other than the same control exercised over each and every producer would not only produce inequality of present opportunity for profit but also involve future loss, injury, and impairment of ability to produce oil from the common source of supply."

[fol. 275] The affidavit of R. D. Bush, introduced on behalf of defendants-appellees, states:

"That in the State of California there is a department created by law known and designated as the Department of Natural Resources of the State of California. That within said Department of Natural Resources there is a division created by law for the supervision of petroleum and gas, in charge of a chief, known as State Oil and Gas Supervisor. That he is now and at all times hereinafter mentioned was the duly appointed, qualified and acting State Oil and Gas Supervisor of said State of California. That as such State Oil and Gas Supervisor it is, and at all the times hereinafter mentioned has been, his duty so to supervise the drilling, operation and maintenance and abandonment of petroleum or gas wells in the State of California, as to prevent, as far as possible, damage to underground petroleum and gas deposits from infiltrating water and other causes and loss of petroleum and natural gas.

"That as such State Oil and Gas Supervisor he has control of and access to the records of all oil wells drilled and/or operated within the State of California, and is familiar with the various oil fields in said State and with the lands situated within each of said fields and with the production of oil and gas from each of said fields.

"That the laws of said State of California provide that the unreasonable waste of natural gas is declared to be opposed to the public interest and is prohibited and declared to be unlawful.

"That the law provides for the supervision of the drilling operation, maintenance and abandonment of petroleum or gas wells in said State so as to prevent damage to underground petroleum and gas deposits from infiltrating water and other causes and loss of petroleum and natural gas, but does not provide any regulations as to the quantity of oil which may be produced.

"That under and pursuant to the above mentioned law prohibiting the waste of natural gas, actions have been commenced by the State of California against the operators in certain oil fields within said State to prevent the waste of natural gas within said fields. Except for such curtailment of oil production as naturally results from the reduction in the production of natural gas, all measures adopted and in force within the State of California for the proration of said production among the producers has been voluntary on the part of said producers. That affiant is familiar with the steps taken by said producers. That affiant is familiar with the steps taken by said producers for said purpose, which steps have been and are as hereinafter set forth.

"That during the month of January, 1929, at a meeting of the oil operators of the State of California called for that purpose a General Committee of eighteen was appointed by said operators to regulate the production of oil in the State of California; that the various fields in said State were divided into groups and an Umpire appointed for each group, the duties of said Umpire being to enforce the proration orders issued by said Committee.

[fol. 276] "That on the 1st day of November, 1929, the daily production of crude oil in the State of California was approximately one million (1,000,000) barrels. That on said date the first curtailment agreement in said State became effective and the allowable production for the State was reduced to six hundred fifty thousands (650,000) barrels per day. That from said date to the present, curtailment has been in effect in said State and the allowable production has from time to time been reduced. That during the past few months the allowable production has been fixed at five hundred ninety-six thousand (596,000) barrels per day.

"That on the sixteenth day of September, 1930, said General Committee at a regularly called meeting, found the

potential production of the State of California to be one million one hundred eighty-six thousand six hundred (1,186,600) barrels of crude oil per day, and fixed the allowable production for the State of California at not more than five hundred fifty thousand (550,000) barrels per day, but because there was certain production within the State on which curtailment could not be secured, said Committee fixed the daily allowable production for the fields and producers subject to curtailment at five hundred forty thousand (540,000) barrels per day, the additional ten thousand (10,000) barrels being designed to take care of the production on which curtailment could not be secured. That affiant has seen the copy of the resolution adopted by said Committee on said date, and that it is provided therein that each operator shall absorb any new well excess in advance of the completion of such well, and in case the excess shall be greater than such operator's estimated excess, such greater amount shall be absorbed under the direction of the Umpire within ten (10) days for any new well brought in within fifteen (15) days from the date of said resolution, and thereafter within five (5) days after such new well is completed.

"That said order by its terms was to become effective on the 17th day of September, 1930, and continue in effect until January 1, 1931, subject to change by said Committee.

"Attached hereto, marked Exhibit "A" and by reference made a part hereof, is a list published by said Committee which shows the principal producing fields of this State with the potential production of each, the percentage of curtailment ordered for each field, the allowable production for each field until January 1, 1931, and the actual daily production for each field during the period September 1st to September 15, 1930, both inclusive. Affiant is familiar with the actual and potential production of the various fields and properties in said State, and to the best of his knowledge and belief states that the figures set forth in said Exhibit "A" are approximately correct and that the actual production of oil in said State is approximately correct and that the actual production of oil in said State is approximately the quantity fixed as the allowable production under the orders of said Committee.

"Affiant further states that practically all of the operators and producers of crude petroleum in the State of California are voluntarily co-operating in the proration and curtailment of crude oil. A few of the operators and producers in said State have refused and do still refuse to co-operate in said movement, but they are few in number and the quantity of oil produced by them comprises only a small percentage of the actual and/or potential production [fol. 277] of the State and the overproduction of said operators has been absorbed by extra curtailment of those participating in said movement.

"That it is the opinion of affiant that the proration of production of oil, sometimes referred to as conservation and sometimes as curtailment, is of great importance, not only to the producers, but to the State of California, the United States and the people thereof. That to produce the desired results proration must be generally effective throughout the United States; that affiant believes that said policy of proration if made generally effective throughout the United States will balance the supply of and demand for crude petroleum, stabilize markets for petroleum products, prevent waste of one of our most valuable natural resources and result in immediate and future benefits to the industry itself and to the people at large.

"Further affiant sayeth not.

California Proration Schedule, September 16-30, 1930

	Sept. 16-30 Potential B/D	% Cut	Fixed Allotment B/D	Production Sept. 1-15 B/D
Belridge	2,425	29.90	1,700	1,901
Brea-Olinda	22,450	51.00	11,000	11,685
Capitan	1,025	98.05	20	15
Coalinga	34,100	73.61	9,000	8,826
Dominguez	15,220	37.58	9,500	9,995
East Coyote	3,595	55.49	1,600	1,525
Elk Hills	29,820	42.99	17,000	18,158
Elwood	111,855	68.71	35,000	39,573
Fruitvale	8,605	69.32	2,640	2,553
Huntington Beach	44,170	36.61	28,000	27,910
Inglewood	22,585	29.16	16,000	17,609
Kern Front	21,885	56.59	9,500	10,110
Kern River	12,000	77.50	2,700	2,523
Kettleman Hills	90,000	83.33	15,000	18,618
Lawndale	250	10.00	225	238
L. A. & Salt Lake	1,450	3.45	1,400	1,505
Long Beach	198,470	52.13	95,000	102,370
Lost Hills	6,500	95.00	325	315
Maricopa Flat	17,265	53.66	8,000	8,710

	Sept. 16-30 Potential B/D	% Cut	Fixed Allotment B/D	Production Sept. 1-15 B/D
McKittrick	4,470	19.46	3,600	4,103
Midway-Sunset	90,310	44.64	50,000	53,787
Montebello	9,105	20.92	7,200	7,481
Mount Poso	23,785	62.16	9,000	9,610
Newport	30	.....	30	30
Playa Del Rey	23,450	.....	.....	21,825
Potrero	2,510	.40	2,500	2,433
Richfield	15,200	40.79	9,000	9,430
Rincon	2,700	.....	2,700	2,682
Rosecrans	6,655	17.36	5,500	6,655
Round Mountain	10,795	62.95	4,000	4,025
Santa Fe Springs	184,710	51.27	90,000	106,321
Santa Maria	10,500	71.43	3,000	3,585
[fol. 278]				
Seal Beach	35,425	49.19	18,000	18,150
Summerland	310	3.23	300	359
Torrance	11,825	15.43	10,000	11,825
Ventura Avenue	92,065	49.49	46,500	46,657
Ventura-Newhall	5,800	22.41	4,500	4,714
Watsonville	60	.....	60	63
West Coyote	11,175	23.94	8,500	9,516
Wheeler Ridge	600	.....	600	592
Whittier	1,450	3.45	1,400	1,408
	1,186,600	54.49	540,000	609,390

"Notes.—

"1. No provision has been made for an unobtainable curtailment of 7,000 B-D at Santa Fe Springs nor for the present excess of 10,000 B-D at Kettleman Hills.

"2. No definite allotment has been given Playa del Rey because there is at present no recognized market or price quotation for the oil.

"3. No provision is made in this schedule for production from possible new fields such as Santa Barbara, Pitas Point, Terra Bella, Weed Patch or Hermosa Beach."

[fol. 279] The affidavit of R. D. Parker, introduced on behalf of defendants-appellees, states:

"That he is Chief Supervisor of the Oil and Gas Division of the Railroad Commission of Texas, and has held such position for a number of years. That the Railroad Commission of Texas is, under the laws of the State of Texas, charged with the duty of enforcing the oil and gas conservation laws of the State and of making rules and regulations under such laws for more effectively carrying out and enforcing same. That under the laws of the State of Texas the duties, in part, of the Chief Supervisor are to gather information and to assist the Commission in the enforce-

ment of the provisions of the oil and gas laws of the State of Texas and all rules, regulations, and orders of said Commission made thereunder.

"That the Railroad Commission of Texas, having been informed by members of the oil and gas industry that a condition of serious over-supply of oil existed in this State, and that waste of oil and gas was taking place, suggested to the Texas Division of the Mid-Continent Oil & Gas Association and to the Independent Petroleum Association and to the industry the appointment of a committee to study conditions, report facts, and make recommendations to the Commission of ways and means of effecting a balance between supply and demand of petroleum in this State and of preventing further waste of oil and gas. That thereafter a committee composed of six representatives was appointed—two representatives from the Texas Division of the Mid-Continent Oil & Gas Association, two representatives from the Independent Petroleum Association, and two representatives from purchasing companies. That this committee employed a technical advisor and submitted a report to the Commission calling attention to serious overproduction, and after calling in additional representatives from the industry, submitted to the Commission, at a public hearing held in the City of Austin, Texas, on July 30, 1930, after due notice to all interested parties, a full report with recommendations, a copy of which is hereto attached as Exhibit A and made a part hereof. That at said hearing on July 30, 1930, said report of the committee was heard and other evidence presented to the Commission, and on August 9, 1930, a further hearing was held after notice, following which on August 14, 1930, the Railroad Commission of Texas issued a tentative order for conservation and prevention of waste of crude petroleum and natural gas in the various fields of the State of Texas and the prevention of discrimination by common purchasers in the purchasing of oil therefrom, a copy of which is hereto attached as Exhibit B and made a part hereof. That in said order of August 14, 1930, attached hereto as Exhibit B, notice was given of a further hearing to be held on the 25th day of August, 1930, to determine the reasonableness of said tentative order of August 14, 1930, and to consider specific orders for individual fields and dis-

tricts for carrying into effect the purposes of the tentative order of August 14, 1930. That a hearing was held on August 25, 1930, pursuant to said notice, at which testimony was heard, committee reports received, and argument fully presented by representatives of producers and purchasers of oil in this State. That thereafter on the 26th day of August, 1930, the Railroad Commission of Texas entered a supplementary order modifying and supplementing said order of August 14, 1930, a copy of which is hereto attached as Exhibit C and made a part hereof. That at said hearing on August 25, 1930, and at subsequent hearing on August [fol. 280] 26, 1930, both held after due notice to all interested parties, testimony was heard and argument presented upon the advisability of the entry of an order for the protection of small marginal wells as a conservation measure. That at the conclusion of said hearing the Railroad Commission entered an order on August 26, 1930, adopting a permanent rule defining marginal wells and exempting such wells from curtailment in the purchase of oil within the State of Texas by any common purchaser electing to purchase oil in smaller quantities than the amount tendered for purchase, a copy of which order is hereto attached as Exhibit D. and made a part hereof.

"That, as will be seen from Exhibit B hereto attached, the Railroad Commission of Texas, in its tentative order of August 14, 1930, limited the production of oil in the State of Texas for the effective period of the order to 750,000 barrels per day, in order to bring said production in balance with the maximum market available for oil in Texas, in accordance with the reports and testimony submitted to it. That on account of special conditions existing in the Gulf Coast fields of Texas, such tentative order of August 14, 1930, was modified by the final order of August 26, 1930, a copy of which is hereto attached as Exhibit C, under the terms of which the limitation of production in the Gulf Coast fields to 150,500 barrels per day, which was necessary to curtail the statewide production to 750,000 barrels per day, was not made effective until thirty days after the effective date of the order, to-wit, August 27, 1930, in order to enable the producers in the Gulf Coast fields of Texas so to limit the production from their properties as to bring the supply in balance with demand. That special consideration

was given to differences in producing conditions in different areas and to the market demand for oil produced in different areas. For example, old settled production in certain fields such as the Laredo field and the fault line fields of East Central Texas, including the Mexia, Powel, Richland, Currie, and Nigger Creek fields, were permitted to produce to full capacity. That in flush fields a greater measure of curtailment was applied, varying in accordance with peculiar conditions existing in specific fields. For example, the Yates field in Pecos County, Texas, showing a potential of 5,500,812 barrels per day according to the umpire's report filed with the Commission, was limited to a daily production of 103,000 barrels of oil, or 2 per cent of the potential; the Panhandle area, with a potential of 120,168 barrels per day as shown by the umpire's report on file, was limited to 80,000 barrels per day; the Crane-Upton field, with a potential of 47,920 barrels per day, was limited to 31,000 barrels per day; the Howard-Glasscock field, with a potential of 62,000 barrels per day, was limited to 22,700 barrels per day; the Van field in Van Zandt County, with a potential according to testimony presented at the hearing of approximately 1,000,000 barrels per day, was limited to 27,500 barrels per day; the Darst Creek field, with a potential of 156,822 barrels per day according to the umpire's report, was limited to 42,300 barrels per day; the Salt Flat field, with a potential of 20,595 barrels per day according to the umpire's report, was limited to 16,500 barrels per day; the Ector County field, with a potential of 43,640 barrels per day, was limited to 12,000 barrels per day. That from the above it will appear that the curtailment varied from an allowable 2 per cent of the potential in the Yates field to the total potential in other fields, all depending upon the special circumstances existing in the particular field involved. That according to the reports and testimony presented to the Commission the total potential production of the State was something in excess of 7,000,000 barrels per day.

[fol. 281] "Further affiant sayeth not."

EXHIBIT "A"

To the Honorable Railroad Commission of the State of Texas:

"In view of the general situation which exists in the oil business in the State of Texas, which condition has existed for some period of time, and has become more aggravated by recent events; and at the request of your Honorable body, representatives from the oil industry all over the state have endeavored to arrive at what the fundamental causes of the present situation are. These causes, as they appear to these representatives, are contained in the report hereinafter set out, which is herewith submitted to your Honorable body; and in further compliance with your request, the report hereinafter contained suggests certain remedies which appear to these representatives to be necessary to alleviate the conditions as they exist.

"In order that the report and the recommendations hereinafter contained may be more intelligible we undertake to outline the situation as it exists:

"That production of petroleum throughout the world has been for some period of time greatly in excess of the world's market demands. Petroleum is one of the great natural resources of the State of Texas. The production of petroleum within the State has been for a long period in excess of the ready market demand available to producers in Texas. The framers of the Constitution of Texas provided in that instrument that the Legislature of this state should pass such laws as might be necessary to provide for the orderly development and conservation of the natural resources of this state and belonging to its citizens in common. In obedience to this mandate in the Constitution, the Legislature of Texas has from time to time passed various laws, the most recent of which is commonly referred to as the Pipeline Law. This Pipeline Law was designed to fill the gaps left in previous legislation on this same subject, and was primarily designed for the purpose of preventing discrimination in the transportation, in the storage, and in the marketing of crude oil within this state.

"Your Honorable body, by all of these legislative acts, has been charged with the duty and responsibility of ad-

ministering the laws with respect to the orderly development and conservation of oil and gas. Your Honorable body, by virtue of all of these legislative enactments, is empowered to make, promulgate, and enforce such reasonable rules and regulations as may be necessary to properly provide for this orderly production and conservation.

"The surplus production of petroleum over demand can not be directly attributable to any given section or to any particular group within the state. Development of geophysical devices and new and improved drilling machinery enabling vastly deeper drilling than ever before has hastened the transformation of the business of producing oil from a gambling basis to a scientific basis. New, prolific pools have been discovered and developed by this new, [fol. 282] scientific method years in advance of their probable discovery by old methods. Improvements in methods of refining have enlarged the capacity of a barrel of petroleum to supply the demands of consumers. Therefore, if the future citizens of Texas are to have their share in the enjoyment of petroleum deposits as part of the natural resources of the state in whic hthey will live, it is incumbent upon your Honorable body to exercise the powers vested in it through the Legislature by the Constitution to take care of these future generations to come, and to prevent the actual waste throught reckless and profligate production of this great natural resource.

"The Legislature has directed that persons who are by law defined as common purchasers shall in purchasing petroleum in this state refrain from discriminating between producers in the same field, and refrain from unjust or unreasonable discrimination between different fields within this state, and has delegated to your body the duty of determining the reasonableness of any discrimination between various fields, taking into account the size, age, depth of wells, and all other factors.

"Some fields within this state have been producing for many years, and the production from these old wells is in such condition that to enforce proration against these wells would from a practical standpoint operate to destroy them. Other wells are producing such a quantity of water along with the oil that to curtail the operation of such wells would permit water encroachment to such an extent as to destroy

the wells, and, thereby, in each instance, forever destroy the amount of oil ultimately recoverable through such wells. To destroy the amount of oil ultimately recoverable through any well now in operation is an actual waste. Many wells within this state are being operated solely with the view to producing oil therefrom, and the gas which is being produced along with the oil is being permitted to escape and to be actually wasted because to conserve the gas thus being produced would result in a diminution of the oil being produced. Many wells are now being drilled with no hope but that the oil so produced will either be stored at a resulting waste, or become an additional burden to an already overcrowded market.

"With this general situation in mind, the following concrete suggestions are made with the idea that your Honorable body (which is a fact-finding body as well), after determining the facts as they exist, will enter an order embodying such concrete rules and regulations as to your Honors may seem best suited to remedy the present wasteful situation.

"We suggest that adequate rules and regulations be contained in the order to accomplish the following general outline of results:

"1. That a statewide curtainment of the amount of oil which may be produced within this state be effected for a period of ninety (90) days beginning August 1, 1930.

"2. That the basis of such curtailment be defined specifically as to each field within this state, taking into consideration the various facts and circumstances within each separate field.

"3. Since at your request a careful detailed survey of the present situation has been made, and from such survey it is indicated that a reduction of 75,000 barrels in daily production is now needed to meet the situation as it now [fol. 283] exists; and since in the opinion of the Producers' Committees, which have been working on this survey it is advisable to obtain not only the reduction necessary to balance demand, but an additional reduction of at least 50,000 barrels, bringing a total curtailment of approximately 125,000 barrels below the daily average Texas production at the

end of June, we recommend that the specific daily production from each field or district be reduced and limited during such ninety-day period to the following specific amounts:

Filed	Present production as of July 19,1930, barrels.	Daily permitted production during proration period, barrels
Panhandle (including Gray, Hutchinson, Moore, Carson, Potter and Wheeler counties) (July 24, 1930)	96,450	80,000
North Central Texas (including Archer, Baylor, Clay, Cooke, Foard, Montague, Wichita and Wilbarger counties)	74,450	69,000
West Central Texas (including Brown, Callahan, Coleman, Eastland, Jack, Palo Pinto, Shackelford, Stephens, Throckmorton, Young, Haskell and Runnells counties)	55,700	52,000
West Texas (including Crane, Crockett, Ector, Howard, Glasscock, Jones, Mitchell, Scurry, Reagan, Winkler, Pecos, Ward, Jones and Fisher counties)	293,950	276,350

"In this district, since most of the fields are already either under proration, or are badly subject to water encroachment, we recommend that the production of Upton and Crane counties, now totaling approximately 33,000 barrels per day be reduced 33⅓ per cent, or 11,000 barrels; and that the Big Lake field in Reagan County, now producing 11,000 barrels, from an upper or sulphur pay, and 9,000 barrels from an 8500-foot pay, be reduced by 33⅓ per cent each, or 6,600 barrels. In connection with the deep pay mentioned in this field, it should be pointed out that there is an actual waste of valuable gas far out of proportion to the oil being produced, amounting to 10,000 cubic feet per barrel, whereas in most fields of West Texas the oil is being flowed with from 300 to 500 cubic feet per barrel.

Filed	Present production as of July 19, 1930, barrels	Daily permitted production during proration period, barrels
East Texas (including Anderson, Cherokee, Navarro, Freestone, Limestone and Van Zandt)	39,350	39,350

[fol. 284] "We recommend that no reductions be attempted in the old fault-line fields, including Mexic, Powell, Richland, Currie, and Nigger Creek, for the reason that these wells are already producing such amounts of water that they can not be curtailed without resulting in waste.

Van Field (Van Zandt County)

"This field, although less than a year old, has demonstrated that it has an immense potential. It is being operated at present under the unit plan, and production is being held to 25,000 barrels per day, although its potential is many times that amount. In connection with this field it should be borne in mind that there are certain wells now drilling outside of the unit which may prove up additional areas; and if so, the entire area should be included under proration, not to allow more than 25,000 barrels per day of total takings from the field during this proration period.

Filed	Present production as of July 19, 1930, barrels	Daily permitted production during proration period. barrels
Southwest Texas (including Bexar, Caldwell, Atascosa, Guadalupe, Bastrop, Williamson, Milam, Live Oak, McMullen, Webb, Duvall, Jim Hogg and Zapata counties)	72,400	66,150

"In the Southwest Texas District, we call special attention, first to the Darst Creek pool in Guadalupe County, where proration has been in effect within the last few days, with a total production under proration of 26,500 barrels. This proration has been upset by certain injunction suits

against the Railroad Commission, and we wish to urge that your Honorable body use all force at its disposal, and obtain the full co-operation of the Attorney General's Department to support proration and to dissolve the recently granted temporary injunction. When such has been accomplished, we urgently recommend that the Darst Creek proration again be put into effect at the former maximum of 26,500 barrels per day.

"In the Salt Flat field, in Caldwell County, we recommend that the present production of 20,900 barrels be reduced to 15,675 barrels.

"In the Laredo District, including the new Escopas field, in Zapata County, we recommend that the settled production be curtailed ten per cent; and that the Escopas field be curtailed fifty per cent now, and an additional percentage later, if necessary. This district now has 11,700 barrels, and should be reduced to a maximum of 10,000 barrels.

"In the new Chapman field, in Williamson County, there is a present potential production variously estimated as high as 22,000 barrels, with a pipeline outlet of 7,000 barrels. We recommend that the production be held strictly to this present pipeline outlet, or 7,000 barrels; and we wish to call attention here to the very serious situation which has arisen from the disorderly and wasteful marketing of this oil, a condition which is due alike to the actions of certain purchasing companies and of the producers in the field.

Filed	Present production as of July 19, 1930, barrels	Daily permitted production during proration period, barrels
Gulf Coast District (including Orange, Jefferson, Hardin, Liberty, Chambers, Galveston, Harris, Washington, Austin, Fort Bend, [fol. 285] Brazoria, Wharton, Matagorda, Refugio, Kleberg and Bee counties	183,500	150,500

"In this district the Refugio field is now producing 36,000 barrels per day from 105 wells. We recommend a curtailment of 33⅓ per cent to 24,000 barrels total, unless fur-

ther investigation by your Honorable Commission shall show that such a cut would endanger the life of these wells, with the resulting waste. This is a semi-flush field and it is certainly not fair to ask the producers of North and West Texas to bear the h-avey load of proration, without some of the fields along the Gulf Coast sharing therein.

"The new Pettus field in Bee County is another danger spot. We recommend that everything possible be done to discourage drilling of new and unnecessary wells in this field, and that the production be rigidly restricted to the present 6,200 barrels per day. One well has just been completed, estimated good to 2,000 barrels per day, in this field, and if more wells of similar size are encountered and the field will undoubtedly require a carefully worked out proration plan to handle the situation.

"There are several other fields in the Gulf Coast District, which can undoubtedly stand some curtailment. The production of the other fields, excluding the Pettus and Refugio totals 141,000 barrels. For those fields we recommend that the production be curtailed by at least 15 per cent, or 21,000 barrels per day, distributing such cuts where same may be best applied in the judgment of your Honorable Commission, or the committees working in those fields. In this case again, curtailment measures should be applied to flush or semi-flush wells, without curtailing pumping wells, which are producing such quantities of water as to endanger their continued existence with resulting waste of this natural resource.

"Reference is here made to the report of David Donoghue, Technical Advisor of the Joint Committee of the Independent Petroleum Association, the Mid-Continent Oil and Gas Association, and the purchasing companies, which has already been filed with the Honorable R. D. Parker, Chief Supervisor of the Oil and Gas Division of your Honorable Commission. In this report there is contained a comprehensive survey of conditions in Texas, as of June 28, 1930, showing Texas production as of that date totaling 863,000 barrels per day, with a visible pipeline outlet of approximately 76,000 barrels less, or 786,400 barrels total. Mr. Donoghue's report sets out in a condensed form the results of the investigation which was conducted in line with your request, and on the facts disclosed by said report the foregoing suggestions are based.

"4. Should any new pool be brought in during this proration period, or any extension thereof, as the result of drilling in progress at the effective date of the Commission's order, or as the result of drilling done pursuant to a contract in existence as of such effective date, then the production from such new pool shall be limited to such an amount as the Commission upon hearing shall then determine.

"5. That new wells in old pools drilled after the effective date of your order be divided into two classes:

"(a) Wells, the drilling of which was made necessary to [fol. 286] protect the lease premises on which same were drilled from offset drainage and/or forfeiture.

"(b) All other new wells in old pools.

'That the production from Class (a) new wells be run in which the production from the lease on which same are respectively situated, and be figured in arriving at the then average daily production per well per lease; that the production from Class (b) new wells be shut in and not produced during the proration period, or any extension thereof, except in such manner as the Commission may after proper hearing allow.

"6. That the order issued by your Commission specify as to each district the character of wells which shall be prorated, in order to accomplish the reduction hereinbefore recommended for that particular area, bearing in mind that in all cases the small or marginal well, or the well producing large quantities of water, shall be protected, and that no attempt shall be made to curtail any well in such a manner as to result in its abandonment, and consequent actual waste of petroleum.

"7. That such proration order be not construed as relieving all persons from a strict compliance with all statutory laws governing the production, transportation, storage and purchase of oil.

"Upon the hearing before your Honorable body representatives from the various fields, pools, and districts will present the pertinent facts to assist you in the framing of your specific order as same applies to such particular field,

pool or district. We recommend that in the enforcement of your orders, as they apply to each separate field, pool, or district, such local committees and/or supervisors be utilized and granted such powers and authority as by your order you may designate.

"The foregoing report and suggestions are respectfully submitted as a compliance with your request, and in as much detail as we feel is possible in this short period, and we hereby pledge our full co-operation for any future service you may call upon us to render in this connection.

"Respectfully submitted at Austin, Texas, this 30th day of July, 1930, by the undersigned.

(Signed) Robert R. Penn, Chairman. John E. Kilgore, Wichita Falls. M. S. Church, Dallas. Chas. P. McGaha, Wichita Falls. C. W. Kennon, Jr., Mexia. W. K. Campbell, Wichita Falls. J. S. Bridwell, Wichita Falls. Ed. Peterson, Wichita Falls. J. A. McCarty, Wichita Falls. T. O. Shappell, Wichita Falls. J. C. Reynolds, Wichita Falls. John F. O'Donohoe, Wichita Falls. E. H. Eddleman, Wichita Falls. John F. Mouser, Eastland. J. H. Clark, Amarillo. H. J. Struth, Houston. W. N. Finnegan, Jr., Houston. R. M. Underwood, [fol. 287] Wichita Falls. R. C. Stanford, Wichita Falls L. H. Simpson, Mexia. W. L. Todd, Dallas. Warner Clark, Dallas. M. W. Blair, Wichita Falls. P. B. Flynn, Wichita Falls. Harvey Harris, Wichita Falls. O. O. Franklin, Vernon. P. C. Murphy, Houston. L. H. Cullum, Wichita Falls. W. D. Gully, Brownwood. H. P. Evans, Brownwood. David Donoghue, Ft. Worth.

"I, C. F. Petet, Secretary of the Railroad Commission of Texas, do hereby certify that the foregoing is a true copy of a report of a committee composed of R. R. Penn and others representing the Texas division of the Mid-Continent Oil and Gas Association, the Independent Petroleum Association, the purchasing companies operating in the State of Texas, and various producers of oil in said State, said report being the same which was submitted to the Commission at a public hearing held in the City of Austin July 30, 1930, and calling attention to over-production and waste of crude oil in said State.

"Witness my hand and the seal of the Railroad Commission of Texas on this the 23rd day of September, A. D. 1930.

C. F. Petet, Secretary of the Railroad Commission of Texas." (Seal.)

EXHIBIT "B"

"Railroad Commission of Texas, Oil and Gas Division

"Oil and Gas Docket No. 112

"In re Conservation and Prevention of Waste of Crude Petroleum and Natural Gas in the Various Fields in the State of Texas and the Prevention of Discrimination by Common Purchasers in the Purchase of Oil Therefrom

"Austin, Texas, August 14, 1930.

"Pursuant to due notice in the above cause given upon application of a joint committee of the Independent Petroleum Association, The Texas Division of the Mid-Continent Oil and Gas Association, and the purchasers of crude oil in the State of Texas and pursuant to the conservation laws of the State of Texas, as contained in Title No. 102, Revised Statutes of 1925, and amendments thereto, hearings were begun on July 30, 1930, and concluded on August 9, 1930, for the purpose, among other things, of inquiring into the present status of the production of crude oil or petroleum in the State of Texas, and as to conditions existing in the handling and marketing of the production thereof in the various oil fields in the State of Texas with a view of issuing such orders as might be necessary to avoid waste and promote the conservation of the natural resources in said State. At such hearings, representatives of the various persons, firms and corporations in the State of Texas, en- [fol. 288] gaged in the several branches of the oil industry in this State, including the production thereof, appeared, in response to notices, and evidence was introduced and arguments presented in the premises.

"Authority to deal with the subject of the conservation of the natural resources of the State of Texas is derived from the Constitution of Texas as amended Aug. 31, 1917,

wherein it is made incumbent upon the legislature to pass laws appropriate to the conservation and development of the natural resources of the State. In obedience to this mandate there was enacted in 1919 an oil and gas conservation act which was codified in 1925 under Title 102, Revised Civil Statutes of Texas. By this Act, the legislature has forbidden comprehensively the production of crude oil or petroleum 'in such manner and under such conditions as to constitute waste' and the duty is placed upon the Railroad Commission of Texas to 'do all things necessary for the conservation of oil' and to 'establish such rules and regulations as will be necessary to conserve the oil and gas resources in the State.' This Commission was made the agency of the legislature to control for it the production, storage, carriage and purchasing of crude oil for the primary purpose of protecting a natural resource in which there is a measure of ownership common to all our people. Several phases of the conservation act just referred to have been before the courts of this State in cases where the power of this Commission to enforce regulations for the conservation of crude oil and natural gas has been sustained.

"There is not included within the authority vested in this Commission, under the acts referred to, the power to adjust the supply of petroleum to the demand of the market, therefore merely to bring about an increased price of the commodity. While as citizens the Commission may have a keen interest in the economic welfare of the large group of citizens, whose capital is devoted to the production of oil, it cannot be the guardian of their pecuniary interests. The functions assumed by our State Government cannot include that of an economic dictator. It is apparent, therefore, that this Commission cannot limit the production of crude oil in this State through any proration order upon any other basis than proper consideration involving the interests of all the people of our State.

"If there be within this State production of petroleum in excess of demand, and this excess production results in actual waste of the natural resources of the State, this Commission has the power, and it is its duty, to make such rules and regulations as may be necessary to insure the conservation of the resources so being wasted.

"From the facts presented to us at the hearing of this cause we shall find that such conditions exist as demand that action be taken within the authority and duty of the Commission to act in the premises. These facts are:

"1. That the world is now producing much more petroleum than necessary to meet the demand and there is now in storage on top of the ground enormous quantities of petroleum. The amount of oil being produced in the world is daily adding to the accumulation of storage oil because of the excess of production over demand.

"2. Generally speaking, outside of Texas the oil industry [fol. 289] and regulatory bodies have taken steps toward the conservation of oil in its natural reservoirs. In the principal oil producing states of this country, oil wells and oil fields have been prorated through cooperation on the part of the industry or through the mandates of governmental units, so that the supply of oil taken from the earth may be adjusted to the demand for consumption, and thereby waste eliminated. The existing and threatened overproduction in Texas is the chief menace to the balancing of supply and demand, and the principal threat that our natural resource will be wasted through continued storage in its crude state.

"3. That the unrestricted production of petroleum within the State of Texas is causing waste, in that when petroleum is removed from the strata in which it is found into artificial storage the action of the evaporation, heat, etc., causes such petroleum to lose its lighter volatile elements and no method has yet been devised to prevent its constant evaporation, shrinkage and deterioration when held in storage for any length of time.

"These lighter volatile elements escape never to be retained so that when quantities are being run to storage, the amount of resulting waste is enormous. Waste is also being occasioned by reason of the fact that the major purchasing companies of Texas seeking to avoid discrimination between the producers of oil from whom they purchase and by reason of the world overproduction above adverted to, are curtailing their purchases in varying amounts, in some instances purchasing only forty per cent of the oil actually produced and in some instances purchasing only

five per cent of the oil which could be produced. There are thousands of marginal wells in Texas, some of them old and producing only small quantities of oil daily. There are thousands of wells in Texas producing quantities of water along with oil. By reason of such curtailed purchases, the operators of these marginal wells and wells producing quantities of salt water are forced to limit the daily operations of such wells. Most of such wells will thereby be destroyed and all of them by such treatment will be impaired in their ability thereafter to produce oil in such quantities as they would have produced but for such limited operations. Thereby the amount of oil ultimately recoverable through such wells will be decreased to such an extent as to amount to a material waste. Moreover, the taking of a greater proportion of oil from one lease than from a contiguous lease brings about a reduction in the gas pressure on the latter lease, and to that extent reduces the quantity of oil recoverable therefrom. The oil not recoverable is wasted to the people just as though it evaporated into thin air. Thus we find that under conditions now existing and that will likely continue during the period of ninety days from the effective date of the rules herein adopted, it would be injurious to the oil and gas bearing sands in this State, and would result in reducing the amount of oil ultimately recoverable therefrom, for oil to be produced in this State in excess of 750,000 barrels per day.

"4. That the running of vast quantities of oil into storage, and its retention there for an indefinite period of time, is now creating in all of the fields of Texas an additional and unnecessary fire hazard in each field.

"5. That a public necessity exists for the intervention of this Commission to make and enforce equitable proration [fol. 290] in the amount of oil that may be produced within this State in such manner as to prevent existing and potential waste.

"6. That for a period of ninety days, beginning the 27th day of August, 1930, at 7 o'clock A. M., not more than 750,000 barrels daily should be produced in Texas, for the reason that such amount is the maximum market available to oil producers in Texas, and any other oil produced in Texas in excess of that amount would cause waste.

"7. That to effect this proposed order so limiting the amount of oil which may be produced, and prorating the amount among the various fields of this State, is necessary.

"It is therefore ordered by the Railroad Commission of Texas that notice is hereby given that at 10 o'clock A. M., on the 25th day of August, 1930, at the hearing room of the Railroad Commission of Texas, in Austin, Texas, a hearing will be held to determine the reasonableness of the following order so prorating such production among the various fields of this State, and except as upon such hearing the same may be modified, the following order shall become effective as of 7 o'clock A. M., the 27th day of August, 1930.

"(1) For a period of ninety days, beginning the 27th day of August, 1930, at 7 o'clock A. M., unless and only to the extent modified by subsequent orders of this Commission, no more than 750,000 barrels of oil per day shall be produced within the State of Texas.

"(2) During such ninety day period the daily production of oil from the various fields in this State shall be limited to the following specified amounts:

"Panhandle (Including Gray, Hutchinson, Moore, Potter, Carson and Wheeler Counties): 80,000 barrels.

"North Central Texas (Including Archer, Baylor, Clay, Cooke, Foard, Montague, Wichita and Wilbarger Counties): 69,000 barrels.

"West Central Texas (Including Brown, Callahan, Comanche, Coleman, Eastland, Erath, Jack, Palo Pinta, Shackelford, Stephens, Throckmorton, Young, Haskell and Runnells Counties): 52,000 barrels.

"West Texas (Including Crane, Upton, Crockett, Ector, Howard, Glasscock, Jones, Mitchell, Scurry, Winkler, Pecos, Reagon, Ward, Jones, Fisher Counties)**: 276,350 barrels.

**(The amount allotted to this district is tentatively placed at 276,350 barrels daily pending final determination of the exact amount to be allotted to same as a result of determination to be reached after hearing testimony and objection, if any, at a hearing herein scheduled to be held on the 25th day of August, 1930.)

"East Texas (Including Anderson, Cherokee, Navarro, Freestone, Limestone and Van Zandt Counties): 41,850 barrels.

"Southwest Texas (Including Bexar, Caldwell, Atascosa, Guadalupe, Bastrop, Williamson, Milam, Medina, Live Oak, McMullen, Webb, Duvall, Jim Hogg and Zapata Coun-
[fol. 291] ties)**: 67,150 barrels.

**(The amount allotted to this district is tentatively placed at 67,150 barrels daily pending final determination of the exact amount to be allotted to same as a result of determination to be reached after hearing testimony and objection, if any, at a hearing herein scheduled to be held on the 25th day of August, 1930.)

"Gulf Coast Districts (Including Orange, Jefferson, Hardin, Liberty, Chambers, Galveston, Harris, Washington, Austin, Fort Bend, Brazoria, Wharton, Matagorda, Refugio, Kleburg, and Bee Counties)**: 150,500 barrels.

**(The amount allotted to this district is tentatively placed at 150,500 barrels daily pending final determination of the exact amount to be allotted to same as a result of determination to be reached after hearing testimony and objection if any, at a hearing scheduled to be held on the 25th day of August, 1930.)

"The producers of oil in each field in each of the districts as above defined shall, at the hearing on the 25th day of August, 1930, present to this Commission in detail such evidence as may be proper for this Commission then to determine the proper proportion of allowable production to be prorated to each field in each district, so as to limit the total production from each district to the amounts above specified; and such producers shall submit suggested forms of special orders for such fields designed to carry out the purposes of this general order which special orders shall be considered by the Commission at such hearing and adopted or modified as the Commission may determine, or if none be submitted, then the Commission will adopt special orders therefor. Special orders for particular fields heretofore adopted by the Commission shall remain in effect except as they may be modified at or after such hearing.

"(3) Any producers of oil, or any group of such producers, in this State who feel aggrieved by this order or any subsequent order issued pursuant hereto shall have the right, upon application and notice, to a hearing before this

Commission upon such matter of grievance. Only such persons as may be directly affected by a ruling on the matter complained of shall be deemed parties at interest and entitled to notice. At such hearing this Commission will enter such orders and such modifications of orders as it then may deem proper.

"(4) The producers of oil in each field in this district may select from their number a committee. The producers of oil in each district in this State may likewise select a committee of not less than three nor more than five. It shall be the duty of such committees, if selected, to aid and work in cooperation with the Railroad Commission, and its Agents, in carrying out the details of the administration of this and subsequent orders, and to suggest and work out any proposed modification of the same, if it should develop that any unreasonable hardship or discrimination is being accomplished hereunder. Within the limits and in accordance with the terms of this order, and with the assistance of such committees and its agents, this Commission will fix the amount of oil which may be produced from each property in this State during this proration period, or any extension thereof. It is hereby expressly provided that [fol. 292] the final determination or disposition of all matters covered by this order is reserved to the Commission.

"(5) On a day in the month of November, to be hereafter determined, notice of which will be given, there will be held in the hearing room of the Railroad Commission of Texas in the City of Austin, a hearing to determine whether or not this order shall be terminated at the expiration of the ninety day period, or whether it shall be modified and continued, or continued in all of its then terms. This paragraph in this order shall be deemed due notice of such hearing to all parties concerned.

"(6) No provision of this order shall be construed as relieving any person from a strict compliance with all existing laws and regulations of this Commission governing the production, distribution, storage and purchase of oil.

(Signed) "Pat M. Neff, Chairman. (Signed) C. V. Terrell. (Signed) Lon A. Smith, Commissioners.

"Attest: C. F. Petet, Secretary."

"I, C. F. Petet, Secretary of the Railroad Commission of Texas, do hereby certify that the attached is a true copy of an order of the Commission made on August 14, 1930, In re: conservation and prevention of waste of crude petroleum and natural gas in the various fields in the State of Texas, and the prevention of discrimination by common purchasers in the purchase of oil therefrom.

"Witness my hand and the seal of the Railroad Commission of Texas, on this the 23rd day of September A. D. 1930.

"C. F. Petet, Secretary Railroad Commission of Texas. (Seal.)"

EXHIBIT "C"

"Railroad Commission of Texas, Oil and Gas Division

"Oil and Gas Docket No. 112

"In re Conservation and Prevention of Waste of Crude Petroleum and Natural Gas in the Various Fields in the State of Texas and the Prevention of Discrimination by Common Purchasers in the Purchase of Oil Therefrom.

"Austin, Texas, August 26, 1930.

"Pursuant to the order entered herein on August 14, 1930, came on for hearing the objections to such order as proposed to be made effective August 27, 1930, and the other matters specified in said order. After hearing evidence, the Commission is of the opinion that said order should be modified in the particulars hereinafter indicated, and that the allowable production of this State during the proration period should be allocated within the several districts as set forth.

[fol. 293] "It is, therefore, ordered by the Railroad Commission of Texas:

"1. That the order of August 14, 1930, as herein modified and enlarged, be effective from and after August 27, 1930, at seven o'clock A. M.

"2. For the period of ninety days from and after such effective date the total daily production of oil in the State

of Texas shall not exceed the aggregate of the amounts allocated to the various districts of the State in said order as herein modified.

"3. The amount of 80,000 barrels allocated to the Panhandle district shall be distributed to producers in accordance with a plan to be adopted after hearing August 27, 1930.

"4. The amount of 69,000 barrels allocated to the North Central Texas district shall be distributed to the producing properties in said district according to plan submitted by the committee representing that district, which is hereby adopted and will be covered in detail by special order to be hereafter entered.

"5. The amount of 52,000 barrels allocated to the West Central Texas district shall be distributed to the producers therein on the basis of the report of the committee representing operators in said district, which report is hereby adopted and will be covered by special order to be entered in this cause.

"6. The amount of 41,850 barrels allocated to the East Texas district shall be distributed to the producers in the Van field according to an order already entered controlling the same, and the remainder of the amount allocated to said district to be alloted to producing properties ratably upon the basis of their present production as of August 16, 1930.

"7. By agreement of parties interested, the final determination of the amount to be allocated to the West Texas district is further deferred to give Reagan County operators an opportunity to work out, with the aid of the technical advisor selected for that purpose, a plan to control and curtail production of deep wells in the Big Lake field, and until that problem is worked out the daily production in said district shall not exceed 276,350 barrels, distributed in accordance with proration orders now in effect, applicable to particular fields, and allowing to Crane and Upton Counties 29,000 barrels per day, to be allocated to particular properties in accordance with a plan hereafter to be adopted and to other counties in said district on the basis of their present production as of August 16, 1930.

"8. The daily production of the Southwest Texas district shall not exceed 97,150 barrels, to be allocated as follows:

Darst Creek field and Salt Flat field in accordance with existing proration orders;

Chapman field in Williamson County, 9,000 barrels apportioned ratably among the various producers in such field; and to the Laredo field, 13,500 barrels, apportioned ratably among the producers;

[fol. 294] And to the other fields in said district not to exceed their production, respectively, as of August 16, 1930.

"9. In consideration of assurance given the Commission by the local committees of operators in the Gulf Coast district that such operators will curtail production as rapidly and effectively as practicable by drilling only necessary wells, and other methods suggested in the reports of said committees on file, the limitation of daily production in said district of 150,500 barrels, imposed in the tentative order of August 14, 1930, is postponed for a period of thirty days from August 27, 1930, and in the meantime no producing property in said district shall exceed its present daily production as of August 16, 1930, provided that all new wells completed after the effective date of this order and all offsets thereto shall not be allowed to produce in excess of 500 barrels of oil daily, and that all flowing wells shall be properly equipped with tubing and minimum chokes to effect the maximum possible reduction in production consistent with safe operation and to control and restrict the production of all new wells and their offsets to the maximum of 500 barrels of oil as herein specified.

"Pat M. Neff, Chairman. C. V. Terrell, Commissioner. Lon A. Smith, Commissioner.

Attest: C. R. McNamee, Acting Secretary. (Seal.)"

"I, C. F. Petet, Secretary of the Railroad Commission of Texas, hereby certify that the foregoing is a true copy of an order of the Commission made on August 26, 1930, in re: conservation and prevention of waste of crude petroleum and natural gas in the various fields in the State of Texas, and the prevention of discrimination by common purchasers in the purchase of oil therefrom.

"Witness my hand and the seal of the Railroad Commission of Texas on this the 23rd day of September, A. D. 1930.

C. F. Petet, Secretary Railroad Commission of Texas. (Seal.)"

EXHIBIT "D"

"Railroad Commission of Texas, Oil and Gas Division

"Oil and Gas Docket No. 112

"In re Conservation and Prevention of Waste of Crude Petroleum and Natural Gas in the Various Fields in the State of Texas and the Prevention of Discrimination by Common Purchasers in the Purchase of Oil Therefrom

"Austin, Texas, August 26, 1930.

"Order Adopting Rule Covering Marginal Wells

"Pursuant to the provisions of the statutes relating thereto and due notice given therefor and to hearing by the [fol. 295] Railroad Commission of Texas at Austin on August 25th and 26th, 1930, the following permanent rule defining marginal wells and exempting such wells from curtailment in the purchase of oil within the State of Texas by any common purchaser electing to purchase oil in smaller quantities than the amount tendered it for purchase is hereby adopted, effective this date:

"Any producing property within this State having a daily per well production of six barrels or less, averaged over the preceding thirty consecutive days, producing from a depth of 2,000 feet or less, shall be deemed to be a property producing only from marginal wells.

"Any producing property within this State having a daily per well production of twelve barrels or less, averaged over the preceding thirty consecutive days, producing from a horizon deeper than 2,000 feet and less than 3,500 feet, shall be deemed to be a property producing only from marginal wells.

"Any producing property in this State having a daily per well production of twenty barrels or less, averaged over the preceding thirty consecutive days, producing from a horizon deeper than 3,500 feet, shall be deemed to be a property producing only from marginal wells.

"Whenever any common purchaser of oil, as defined by law, within this State shall elect to purchase oil in smaller quantities than the amount tendered it for purchase and it becomes necessary for such common purchaser to prorate the amount of its purchases among the tenderers of such oil, such common purchaser shall not prorate its purchases from properties producing only from marginal wells as herein defined, unless the total oil tendered it for purchase from properties producing from marginal wells and from all other properties treated and considered as though producing from marginal wells only exceeds the amount of oil which such common purchaser then elects to purchase, in which event all properties shall be considered to be marginal properties, and shall participate in the outlet in proportion to the number of producing oil wells thereon.

"Pat M. Neff, Chairman. C. V. Terrell, Commissioner. Lon A. Smith, Commissioner.

Attest: C. R. McNamee, Acting Secretary.

"The above and foregoing is a true and correct copy of an order of the Railroad Commission entered this the 26th day of August, 1930.

"C. R. McNamee, Acting Secretary."

"I, C. F. Petet, Secretary of the Railroad Commission of Texas, hereto certify that the foregoing is a true copy of an order of the Commission made on August 26, 1930, in re: conservation and prevention of waste of crude petroleum and natural gas in the various fields in the State of Texas, and the prevention of discrimination by common purchasers in the purchase of oil therefrom.

[fol. 296] "Witness my hand and the seal of the railroad Commission of Texas on this the 23rd day of September, A. D. 1930.

C. F. Petet, Secretary Railroad Commission of Texas. (Seal.)"

[fol. 297] IN UNITED STATES DISTRICT COURT

STIPULATION RE STATEMENT OF EVIDENCE

The solicitors for the plaintiff and defendants hereby agree that the foregoing is a correct statement of the evidence pertinent to the issues on appeal to the United States Supreme Court which was received at the hearing in the above entitled cause.

Dated this 14th day of May, 1931.

Horace G. McKeever, Harry O. Glasser, George S. Ramsey, Edgar S. de Meules, Solicitors for Plaintiff. J. Berry King, Attorney General of Oklahoma. E. S. Ratliff, Attorney for Corporation Commission of Oklahoma. W. P. Z. German, Solicitor for Defendants.

[fol. 298] IN UNITED STATES DISTRICT COURT

[Title omitted]

CERTIFICATE FOR NARRATIVE STATEMENT UNDER EQUITY RULE 75 (B)—Filed May 18, 1931

The foregoing narrative statement of the evidence is hereby allowed and approved, and where therein the testimony of any witness is reproduced in the exact words of the witness, it was so desired by the parties, and the court hereby directs that it be so done; and the same is hereby ordered filed as a statement of the evidence to be included in the record on appeal in the above styled cause, as provided in paragraph (b) of Equity Rule 75.

Dated this 18 day of May, 1931.

John H. Cotteral, Circuit Judge. R. L. Williams, F. E. Kennamer, District Judges.

[File endorsement omitted.]

[fol. 299] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed April 22, 1931

The above named plaintiff, conceiving himself aggrieved by the decree and order made in the above entitled cause on the 9th day of February, 1931, denying its application for a temporary injunction, does hereby appeal from said order and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors, which is filed herewith, and prays that the appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which said decree and order was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this the 22nd day of April, 1931.

Horace G. McKeever, Harry O. Glasser, George S. Ramsey, Edgar A. de Meules, Attorneys for Plaintiff-appellee.

[File endorsement omitted.]

[fol. 300] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed April 22, 1931.

The plaintiff prays an appeal from the order or decree entered in the above entitled cause on the 9th day of February, 1931, and assigns for errors:

(1) That the court erred in finding that the essential and controlling question of fact was whether the Corporation Commission had substantial evidence before it showing that actual waste of crude oil would result from enjoining the enforcement of the defendants' orders set out in the pleadings and shown by the exhibits thereto or in evidence.

(2) That the court erred in finding that any competent evidence was before the Corporation Commission and con-

sidered by it showing that actual waste of oil would result from issuing the writ of injunction prayed for.

(3) That the court erred in ruling that the finding of the Corporation Commission that actual waste of crude oil would result but for their orders was conclusive upon it upon that subject.

(4) That the court erred in holding that the act of the [fol. 301] Legislature of the State of Oklahoma, approved February 11th, 1915, entitled "An Act defining and prohibiting the waste of crude oil or petroleum, providing for the equitable taking of the same from the ground and conferring authority on the Corporation Commission, prescribing the penalty for the violation of the act, and declaring an emergency" embodied in Sections 7954 to 7963, inclusive, Oklahoma Compiled Laws of 1921, is not in contravention of the Fourteenth Amendment to the Constitution of the United States in that it deprives the plaintiff of its property without due process of law.

(5) That the court erred in holding that the Act of the Legislature of the State of Oklahoma, approved February 11th, 1915, entitled "An Act defining and prohibiting the waste of crude oil or petroleum, providing for the equitable taking of the same from the ground and conferring authority on the Corporation Commission, prescribing the penalty for the violation of the act, and declaring an emergency," is not in contravention of the Fourteenth Amendment to the Constitution of the United States in that it is too uncertain and indefinite to constitute due process of law in that it does not with sufficient certainty prescribe a standard of conduct.

(6) That the court erred in not holding that the aforesaid Act of the Oklahoma Legislature approved February 11th, 1915, embodied in Sections 7954 to 7963 inc. Oklahoma Compiled Laws 1921, was entire and inseparable and as such is a price-fixing statute delegating authority to the Corporation Commission of the State of Oklahoma to fix prices of crude oil after making the investigation required by Section 2 of the Act, and that as thus construed it is in violation of the Fourteenth Amendment to the Constitution of

the United States in that it deprives (a) the plaintiff of its liberty of contract, (b) equal protection of the law, and (c) its property without due process of law.

[fol. 302] (7) That, if said Act approved February 11th, 1915 (Section 7954 to 7963, inc. Oklahoma C. L. 1921), is severable and the second section thereof is unconstitutional, then the court erred in not ruling and holding that the Act without Section 2 thereof is void for uncertainty in that it violates the Fourteenth Amendment to the Constitution of the United States in that it is too indefinite and uncertain to constitute due process of law or notify the plaintiff and those similarly situated what standard of conduct is required, and too indefinite and uncertain to authorize and empower the Corporation Commission of the State of Oklahoma to make the orders complained of in this case.

(8) That the court erred in not ruling and finding that all the Corporation Commission's orders complained of are void for the reason that no gauge of the wells in the Oklahoma City field, described in the pleadings, had been made by the Corporation Commission or any lawful agency of the Corporation Commission or lawful agency of the State of Oklahoma.

(9) That the court erred in refusing to find and rule that the defendants' finding of the potential production of crude oil in the Oklahoma City field, described in the pleadings, was not based upon any gauge of the wells made by a duly qualified employee, or appointee, or agent of the Corporation Commission, or the State of Oklahoma, it appearing from the undisputed evidence that the umpires mentioned in the defendants' orders complained of received no compensation from the state or any political subdivision of the state, but were paid their compensation by private individuals and corporations doing business in competition with the plaintiff.

(10) That the court erred in holding that the order of the Corporation Commission of the State of Oklahoma made and entered on June 30th, 1930, in cause No. 10,146, [fol. 303] being order number 5189, and the order of the Corporation Commission of the State of Oklahoma made and entered on August 30th, 1930, in cause No. 10,146, said

order being number 5292, and the order of the Corporation Commission of the State of Oklahoma made and entered on September 30th, 1930, in said cause No. 10,146, being order number 5337, and the order of the Corporation Commission of the State of Oklahoma made and entered on October 28th, 1930, in said cause No. 10,146, being order number 5369, and the order of the Corporation Commission of the State of Oklahoma made and entered on the 30th day of December, 1930, being order number 5413, were not each separately and all together void as being in violation of Section 8 of Article I of the Constitution of the United States, in that each and all regulate commerce among the several states, foreign nations and Indian Tribes.

(11) That the court erred in holding that the order of the Corporation Commission of the State of Oklahoma made and entered on June 30th, 1930, in cause No. 10,146, being order number 5189, and the order of the Corporation Commission of the State of Oklahoma made and entered on August 30th, 1930, in cause No. 10,146, being order number 5292, and the order of the Corporation Commission of the State of Oklahoma made and entered on September 30th, 1930, in said cause No. 10,146, being order number 5337, and the order of the Corporation Commission of the State of Oklahoma made and entered on October 28th, 1930, in cause No. 10,146, being order number 5369, and the order of the Corporation Commission of the State of Oklahoma made and entered on the 30th day of December, 1930, being number 5413, were not each separately and/or all together void in that they did not deprive the plaintiff of its property without due process of law.

(12) That the court erred in holding that the order of [fol. 304] the Corporation Commission of the State of Oklahoma made and entered on June 30th, 1930, in cause No. 10,146, being order number 5189, and the order of the Corporation Commission of the State of Oklahoma made and entered on August 30th, 1930, in cause No. 10,146, being order number 5292, and the order of the Corporation Commission of the State of Oklahoma made and entered on September 30th, 1930, in said cause Number 10,146, being order number 5337, and the order of the Corporation Commission of the State of Oklahoma made and entered on

October 28th, 1930, in cause No. 10,146, being order number 5369, and the order of the Corporation Commission of the State of Oklahoma made and entered on the 30th day of December, 1930, being number 5413, were not void in that they did not deny to the plaintiff the equal protection of the law and were, therefore, not in violation of the Fourteenth Amendment to the Constitution of the United States.

(13) That the court erred in not holding that the order of the Corporation Commission of the State of Oklahoma made on June 30th, 1930, in said cause No. 10,146, being order No. 5189, and the order made by said Corporation Commission on October 28th, 1930, in said cause No. 10,146, being order No. 5369 were void in that they denied to the plaintiff due process of law as required by the Fourteenth Amendment to the Constitution of the United States.

(14) That the court erred in not holding that the order of the Corporation Commission of the State of Oklahoma made on June 30th, 1930, in said cause No. 10,146, being order No. 5189, and the order made by said Corporation Commission on October 28th, 1930, in said cause No. 10,146, being order No. 5369 were void in that they denied to the plaintiff the equal protection of the law as required by the Fourteenth Amendment to the Constitution of the United States.

[fol. 305] (15) That the court erred in holding that the order of the Corporation Commission of the State of Oklahoma made and entered on June 30th, 1930, in cause No. 10,146, being order number 5189, and the order of the Corporation Commission of the State of Oklahoma made and entered on August 30th, 1930, in cause No. 10,146, being order number 5292, and the order of the Corporation Commission of the State of Oklahoma made and entered on September 30th, 1930, in said cause number 10,146, being order number 5337, and the order of the Corporation Commission of the State of Oklahoma made and entered on October 28th, 1930, in cause No. 10,146, being order No. 5369, and the order of the Corporation Commission of the State of Oklahoma made and entered on the 30th day of December, 1930, being number 5413, did not constitute a price fixing scheme and were, therefore, not void in that they deprived the plaintiff of its liberty of contract guaranteed by

the Fourteenth Amendment to the Constitution of the United States.

(16) That the court erred in holding that the finding of the Corporation Commission of the State of Oklahoma as to the existence of actual waste was binding upon it and was not subject to its review.

(17) That the court erred in refusing to rule and find that the plaintiff, if unrestrained by the defendants' orders, could and would produce crude oil, refine it and market it without any actual or material waste and as a consequence thereof was entitled to have the enforcement of defendants' said orders against it restrained and vacated insofar as plaintiff is concerned.

Wherefore plaintiff prays that the decree or order of the court of February 9th, 1931, denying to the plaintiff a tem-
[fol. 306] porary injunction be reversed.

Horace G. McKeever, Harry O. Glasser, George S. Ramsey, Edgar A. de Meules, Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 307] IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL—Filed April 22, 1931

Now, on this 22nd day of April, 1931, came the plaintiff Champlin Refining Company, a corporation, by its attorneys and files herein and presents to the Court its petition praying for the allowance of an appeal to the Supreme Court of the United States, and it appearing that the plaintiff has filed therewith its Assignment of errors, and the Court being fully advised in the premises does hereby allow an appeal to the Supreme Court of the United States as prayed for upon the filing of a bond in the sum $1,000.00 with good and sufficient surety to be approved by the court.

John H. Cotteral, Circuit Judge. R. L. Williams, F. E. Kennamer, District Judges.

[File endorsement omitted.]

[fols. 308 & 309] Bond on Appeal for $1,000, approved and filed April 22, 1931, omitted in printing.

[fol. 310] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPE FOR RECORD TO BE SENT TO THE SUPREME COURT OF THE UNITED STATES—Filed April 22, 1931

To the Clerk of the United States District Court for the Western District of the State of Oklahoma:

In making up the record and transcript for the Supreme Court of the United States in the above entitled cause, you will include in the record and transcript only such parts as are hereby mentioned omitting all other parts of the record, to-wit:

(1) Certificate of Honorable Edgar S. Vaught Judge of the District Court for the Western District of Oklahoma, as to his disqualification in the above entitled cause.

(2) Order of Circuit Court of Appeals for the Tenth Circuit assigning Honorable Franklin E. Kennamer as District Judge to the Western District of Oklahoma.

(3) Order of Circuit Court of Appeals for the Tenth Circuit assigning Honorable R. L. Williams as District Judge to the Western District of Oklahoma.

(4) Plaintiff's second amended and supplemental bill of complaint filed by leave of court on the 2nd day of December, 1930, together with all exhibits thereto attached;

(5) Amendment to second amended and supplemental bill filed January 2nd, 1931;

(6) Answer of defendants to second amended and supplemental bill of complaint;

[fol. 311] (7) Stipulation between the parties filed January 2, 1931.

(8) The decree or order entered on February 9th, 1931, denying plaintiff's application for a temporary injunction.

(9) Findings of Fact filed in the cause on February 9th, 1931.

(10) Conclusions of Law filed in the cause.

(11) Majority opinion of the Court.

(12) Dissenting opinion of Judge Kennamer.

(13) Plaintiff's petition for appeal filed on April 22nd, 1931.

(14) Order allowing appeal entered on April 22nd, 1931.

(15) Plaintiff's assignment of errors on appeal filed on April 22nd, 1931.

(16) Plaintiff's Appeal Bond filed April 22nd, 1931.

(17) Citation issued on April 22nd, 1931, on plaintiff's petition, together with acceptance of service thereof endorsed thereon.

(18) Application for an order permitting cause to be continued and maintained against Paul Walker as successor in office to Fred C. Capshaw.

(19) Consent of Paul Walker to the entering of the order prayed for.

(20) Order permitting cause to be continued and maintained against Paul Walker as successor in office to Fred C. Capshaw.

(21) Condensed statement in narrative form of the evidence introduced at the hearing for a temporary injunction.

(22) This præcipe.

Horace G. McKeever, Harry O. Glasser, George S. Ramsey, Edgar A. de Meules, Counsel for Plaintiff.

[fol. 312] I, as attorney of record for the defendant-appellees in the above entitled cause, do hereby acknowledge service of a copy of the foregoing præcipe on me on this the 22nd day of April, 1931.

E. S. Ratliff, J. Berry King, Atty. Genl., Attorneys for Defendant-appellees.

[File endorsement omitted.]

[fol. 313] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 314] IN SUPREME COURT OF THE UNITED STATES

APPELLANT'S DEFINITE STATEMENT OF THE POINTS UPON WHICH IT RELIES AND STIPULATION TO PRINT ENTIRE RECORD—Filed May 29, 1931

In accordance with Section 9 of Rule 13 of this Court appellant submits the following:

Statement of Parts of Record Necessary for Consideration

As counsel for appellant and appellees cooperated to a large extent in eliminating surplus matter from the transcript certified to this court it will be necessary to print the entire record, omitting therefrom repetition of the caption.

(NOTE.—As to taxation of cost this is not to operate as a waiver of appellant's objection in the court below to the insertion in the evidence of the affidavits of R. D. Parker, Ray Lyman Wilbur, R. D. Rush, and George Otis Smith. See R. 265.)

[fol. 315] Statement of Points Relied On

(1) That Section 2 of the Act of the Oklahoma Legislature approved February 11th, 1915, (1915 Session Laws, 28, same as Sections 7954 to 7963, inclusive, Oklahoma C. L. 1921) hereinafter referred to as the Curtailment Act, undertakes to authorize the Oklahoma Corporation Commission to fix the price of crude petroleum oil produced in Oklahoma and is therefore void in that it is in violation of the Fourteenth Amendment to the National Constitution.

(2) That Section 2 of said Curtailment Act is not a separable part thereof and therefore the whole act must fall as in violation of the Fourteenth Amendment to the National Constitution.

(3) That if Section 2 of the Curtailment Act is so far separable that the remaining sections, or any part thereof, may be considered as independent of Section 2, then the Act, without Section 2, is too vague and uncertain to meet the requirements of due process of law guaranteed by the Fourteenth Amendment to the National Constitution.

(4) That the Curtailment Act is beyond the state's police power in that the production of crude oil is not a public or quasi public business.

(5) That the ownership of lands in fee and/or oil leases thereon and the extraction of crude petroleum oil therefrom through wells and the manufacture of the refined products from crude oil is not a devotion of appellant's property or business to a public use—that is, it is not a public or quasi public business authorizing the State Legislature to enact

the said Curtailment statute under the police powers of the State.

(6) That the Curtailment Act is in violation of the Fourteenth Amendment to the National Constitution in that [fol. 316] it denies the appellant liberty of contract as defined by this court in Allgeyer v. State of Louisiana, 165 U. S. 578, and other decisions.

(7) That the Curtailment Act, as construed and enforced by the appellee, as members of the Oklahoma Corporation Commission, operates as a taking of appellant's property without due process of law guaranteed by the Fourteenth Amendment to the National Constitution.

(8) That appellees' rules and orders shown by the exhibits to appellant's, Second Amended and Supplemental Bill, including the order of December 30th, 1930, No. 5413, being legislative in their nature and made by an instrumentality of the state, are state laws within the meaning of the National Constitution and although an appeal therefrom is allowed by the Curtailment Act to the Oklahoma Supreme Court, nevertheless as that court has no legislative power and can not be vested with such powers by the Legislature the appellant had the right to invoke the jurisdiction of the United States District Court to restrain the enforcement of said orders and rules of appellees without first appealing therefrom to the Supreme Court of Oklahoma.

(9) That each of the appellees' orders shown by exhibits to appellant's Second Amended and Supplemental Bill, including the order of December 30th, 1930, No. 5413, is void in that each as applied to appellant violates the commerce clause of Section 8 of Article 1 of the National Constitution.

(10) That appellees' orders complained of by appellant in its Second Amended and Supplemental Bill and amendment thereto, including the order of December 30th, 1930, No. 5413, were made without any evidence before the Commission of actual or physical waste of crude petroleum in the Oklahoma oil fields in which appellant was and is a producer of crude oil and the enforcement of either of said [fol. 317] orders against appellant constitutes a taking of appellant's property without due process of law and operates as a denial of appellant's property rights guaranteed

by the Fourteenth Amendment to the National Constitution.

(11) That appellees' said orders, and each of them, are void because they and each of them were made without the Commission having first taken a gauge of each oil well as required by Section 5 of the Curtailment Act, thus rendering the enforcement of the orders, and particularly order No. 5413 of December 30th, 1930, under the high penalties prescribed by the Act and other Oklahoma statutes, such an excessive application of the appellees' powers as to deprive appellant of its property and liberty without that due process of law required by the Fourteenth Amendment to the National Constitution.

(12) That the pretended gauges of the oil wells upon which the potential production of crude oil was determined by the Commission and the orders complained of limiting the production of crude oil by appellant and other producers were based, are void and illegal gauges in that said gauges of the wells accepted and acted upon by the Commission were made by private persons, firms and corporations, and their employees, contrary to the Curtailment statute, and no gauge having been made or superintended by a state officer or impartial, uninterested official, each of appellees' orders is void in that the enforcement thereof, particularly in view of the high penalties prescribed by the Curtailment Act and other statutes, deprives appellant of its property without due process of law.

(13) That appellant as the owner of oil leases on lands in Oklahoma described in its Second Amended and Supplemental Bill is vested with the right to enter thereon, drill wells for oil and take through said wells all the oil it can [fol. 318] find so long as it can find a market therefor satisfactory to itself or utilize in its own refinery, and that this right is safeguarded by the Fourteenth Amendment to the National Constitution.

(14) That appellant is the owner of valuable oil and gas leases in several of the Oklahoma oil fields from which it produces and had produced a long time before this suit was commenced and the orders of the Commission made, large quantities of crude oil which it manufactured into gasoline

and other refined products at its refinery located at Enid, Oklahoma; that said Curtailment Act as enforced by the Commission by and through its orders complained of operates to deny appellant its liberty of contract and equal protection of the laws guaranteed by the Fourteenth Amendment to the National Constitution.

(15) That the Curtailment Act is an unconstitutional delegation of Legislative powers to the Corporation Commission, thus rendering the Commission's orders thereunder void.

Respectfully submitted.

Horace G. McKeever, Horace G. McKeever, Harry O. Glasser, Harry O. Glasser, Edgar A. de Meules, Edgar A. de Meules, Geo. S. Ramsey, George S. Ramsey, Attorneys for Appellant.

[fols. 319 & 320] Receipt of a copy of the foregoing Appellant's Definite Statement, etc., is hereby acknowledged on this 23rd day of May, 1931.

J. Berry King, Attorney General of Oklahoma; E. S. Ratliff, W. P. Z. German, Attorneys for Appellees.

[fols. 321 & 322] Stipulation as to Printing of Record

It is hereby stipulated by and between the parties hereto that the entire record filed in the above entitled cause be printed.

Dated this 23rd day of May, 1931.

Horace G. McKeever, Harry O. Glasser, George S. Ramsey, Edgar A. de Meules, Attorneys for Appellant. J. Berry King, E. S. Ratliff, W. P. Z. German, Attorneys for Appellees.

[File endorsement omitted.]

Endorsed on cover: File No. 35,936. W. Oklahoma D. C. U. S. Term No. 122. Champlin Refining Company, appellant, vs. Corporation Commission of the State of Oklahoma et al., etc. Filed May 29, 1931. File No. 35,936.

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF THE STATE OF OKLAHOMA

Equity. No. 1156

CHAMPLIN REFINING COMPANY, a Corporation, Plaintiff,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA et al., Defendants

ORDER EXTENDING TIME WITHIN WHICH TO FILE RECORD IN THE SUPREME COURT OF THE UNITED STATES

For satisfactory reasons appearing to the Court, the time for filing the record in this cause in the Supreme Court of the United States, pursuant to the appeal sued out, is extended until the 12th day of June, 1931.

Dated this 18 day of May, 1931.

John H. Cotteral, Circuit Judge. R. L. Williams, F. E. Kennamer, District Judges.

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF THE STATE OF OKLAHOMA

Equity. No. 1156

CHAMPLIN REFINING COMPANY, a Corporation, Plaintiff,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA et al., Defendants

ORDER EXTENDING TIME WITHIN WHICH TO FILE RECORD IN THE SUPREME COURT OF THE UNITED STATES

For satisfactory reasons appearing to the Court, the time for filing the record in this cause in the Supreme Court of the United States, pursuant to the appeal sued out, is extended until the 30th day of May, 1931.

Dated this 2 day of May, 1931.

John H. Cotteral, Circuit Judge. R. L. Williams, F. E. Kennamer, District Judges.

CLERK'S COPY.

Vol. I

(PART 1)

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1931

No. 485

CHAMPLIN REFINING COMPANY, APPELLANT,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA AND PAUL WALKER, E. R. HUGHES, AND C. C. CHILDERS, ETC., ET AL.

No. 486

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA AND PAUL WALKER, E. R. HUGHES, AND C. C. CHILDERS, ETC., ET AL., APPELLANTS,

vs.

CHAMPLIN REFINING COMPANY

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

FILED OCTOBER 26, 1931

(36,299, 36,300)

(36,299, 36,300)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

No. 485

CHAMPLIN REFINING COMPANY, APPELLANT,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA AND PAUL WALKER, E. R. HUGHES, AND C. C. CHILDERS, ETC., ET AL.

No. 486

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA AND PAUL WALKER, E. R. HUGHES, AND C. C. CHILDERS, ETC., ET AL., APPELLANTS,

vs.

CHAMPLIN REFINING COMPANY

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

VOL. I

(PART 1)

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Aerial view Champlin Refinery.		
No. 7	2	2a
A map of the Oklahoma City field, showing the development therein, the location of the Champlin leases in red blocks, together with all wells drilled in said field, the structural conditions of the field indicated by contours drawn (in black lines), with a 100-foot contour interval on the top of the		

Original Print

subsurface bed known as the Checker Board limestone.

The red line marked "approximate east limits of Wilcox sand wells" is self-defining, the red line indicating area of Arbuckle lime wells is likewise self-defining, the area included within that portion of said map between the areas so defined by said red lines being the "School Land" and the "Johnson" sand zones of the Simpson formation, of which the Wilcox sand zone is also an upper producing bed.

No. 8..... 3 2b

A chart consisting of a delineation of a normal vertical Ordovician (geologic system or time division of rocks), column or section, as found generally in the Oklahoma City field and throughout Oklahoma, identified as as Figure I; that said figure divides the Simpson formation into zones, with the chief lithological characteristics of each of the same.

That Figure I also indicates the upper portion of the producing Arbuckle or siliceous limestone underlying the Simpson formation with its lithologic characteristics; and

A delineation of an east-west cross-section of the Ordovician beds in the Oklahoma City field, identified as Figure 2; that said figure indicates a buried Ordovician faulted, anticlinal ridge, upon which truncation has removed the upper portion of the Arbuckle limestone near the "fault" line, indicated to the extreme right of the figure by an inclined vertical line in black, and has likewise removed progressively westward the up-tilted beds overlying the Arbuckle limestone, namely, the Johnson sand zone, the School Land sand zone, the Wilcox sand zone, and the Simpson limestone, which limestone is likewise indicated in blue color to the right of the "fault" line.

That overlying the defined plane of truncation exist a series of shales and limestones of the Pennsylvanian Age, which serve as a caprock to hold the oil and gas in the producing zones of the older Ordovician beds.

That said figure also indicates the location and depth of the respective Champlin wells in the producing formations.

No. 9..... 4 2c

	Original	Print
A cross-section of the Oklahoma City field, drawn to scale, indicating regional geologic conditions, and important for comparison with like cross-section of the Greater Seminole area, identified herein as Plaintiff's Exhibit 10.		
No. 10	5	2d
A cross-section (east-west) of the Greater Seminole area, drawn to scale, indicating regional geologic conditions there, and important for the information that in that area (as distinguished from Oklahoma City) the Ordovician formations have accordant summits upon an elevated plateau.		
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No. 13	8	5
A list of 109 products of crude oil by tradenames or description, manufactured in the Champlin Refinery.		
No. 14	9	6
A detail of June, 1931, potentials and daily allowed production by companies, for the Greater Seminole area, subdivided into (a) companies not owning pipe lines or refineries and having no outlet for production, except through pipe lines belonging to other companies; the companies so classified in the exhibit prepared by Ray Collins, umpire, own in the Greater Seminole area 894		

	Original	Print
wells, with a total June, 1931, potential of 225,507 barrels, with a total daily allowed production of 66,922 barrels...	9	6
(b) Companies having pipe lines in said area, connecting such production with like owned refineries, sufficient to handle their own production, own 1,351 wells, with a total June, 1931, potential of 262,595 barrels, with a total daily allowed production of 96,458 barrels..	11	8
(c) Companies having production, pipe lines, and refineries, but production so located that they have to depend, to a certain extent, upon other lines to handle part of their oil, own 196 wells with a total June, 1931, potentital of 76,806 barrels, with a total daily allowed production of 15,930 barrels....	12	9
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A summary of amounts billed and collected by the Carter Oil Company (Standard of New Jersey subsidiary) from contributors upon oil production in the Greater Seminole area only, for the account of salary and expenses of Ray M. Collins, as State-wide umpire, for the period from November 1st, 1929, to January 1st, 1931 (no part of said expense being borne by any producer outside the Greater Seminole area, Rec., p. 138). That during said period of time there was produced in said Greater Seminole area by contributors to said fund 106,944,021 barrels, upon which the producers so contributing paid $95,181.39, calculated by the application of an average percentage applied to said production.		
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Pipe line system serving Greater Seminole area as of June 15, 1931.		
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Pipe line systems and loading racks serving Oklahoma City field as of June 27, 1931.		
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A detail of June, 1931, potentials and daily allowed production by companies for the Oklahoma City area, subdivided into		
(a) Companies not owning pipe lines or refineries and having no outlet for their production, except through pipe lines belonging to other companies, own 596 wells with a total potential for the period of 7,192,609 barrels, and a daily		

	Original	Print
allowed production therefrom of 127,756 barrels	19	12
(b) Companies having pipe lines and refineries sufficient to handle their production, own 96 wells with a total potential for the period of 737,739 barrels, and a daily allowed production therefrom of 12,202 barrels	20	13
(c) Companies having production, pipe lines, and refineries, but production so located that they have to depend to a certain extent upon other lines to handle part of their oil, own 54 wells with a total potential for the period of 1,033,629 barrels, with a daily allowed production therefrom of 19,644 barrels	20	14
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	Original	Print
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No. 25.... A statement of the sales value f. o. b. Enid, Oklahoma, of refined products of the Champlin Refinery, July 1, 1928, to May 31, 1931.	70	78
No. 26.... A statement of intrastate and interstate sales by the Champlin Company of refined products and crude oil for last six months of 1928, all of 1929 and 1930, and first six months of 1931.	71	79
No. 27.... A statement of the costs of investment, as of May 31, 1931, in the Champlin Refinery, pipe lines, tank cars, and marketing equipment in the total sum of $11,378,151,50.	72	81
No. 28.... A graphic chart for the years 1920 to 1924, inclusive, drawn to scale showing (a) the purchases in Oklahoma of crude oil by the Champlin Refining Company by months; (b) the crude run in barrels to stills each month; (c) as well as the average price paid for crude so purchased.	73	82a
No. 29.... A graphic chart (similar to Exhibit No. 28) setting forth same data as there for years 1925 to 1930, inclusive, together with the first five months of 1931.	74	82b
No. 30.... A statement taken from the records in the office of the State auditor of gross production from taxable leases (as distinguished from non-taxable Indian leases) of 14 major operators in Seminole area, from January 1, 1929, to March 31, 1931, totaling 339,038,148.85 barrels.	75	83
No. 31.... A statement taken from the records in the office of the State auditor of gross production from all leases in the Oklahoma City field, for which gross production tax reports have been filed as required by the laws of the State of Oklahoma for the period from July 1, 1929, to March 31, 1931, totaling 44,527,836 barrels.	76	83
No. 32.... A graph comparing Champlin's price of 39° gravity crude with the posted Prairie or Stanolind price for the years 1920 to 1931, inclusive.	77	84a

	Original	Print
No. 33	78	85
Order No. 5189, dated June 30, 1930	78	85
Order No. 5246, dated July 24, 1930	89	101
Order No. 5292, dated August 30, 1930	95	108
Order No. 5337, dated September 30, 1930	101	117
Order No. 5343, dated October 6, 1930	102	118
Order No. 5345, dated October 10, 1930	105	122
Order No. 5369, dated October 28, 1930	107	124
Order No. 5374, dated November 3, 1930	122	146
Order No. 5387, dated November 8, 1930	125	151
Order No. 5396, dated December 4, 1930	128	154
Order No. 5413, dated December 30, 1930	132	159
Order No. 5414, dated December 30, 1930	146	180
Order No. 5437, dated February 10, 1931	153	190
Order No. 5468, dated April 20, 1931	170	207
Order No. 5486, dated May 29, 1931	173	211
Order No. 5548, dated June 27, 1931	175	213
Order No. 5549, dated June 29, 1931	177	216
Journal entry No. 1795, dated June 30, 1930	183	221
Journal entry No. 1822, dated November 3, 1930	186	224
Journay entry No. 1835, dated January 9, 1931	189	228
Journal entry No. 1856, dated March 5, 1931.	192	213
Journal entry No. 1864, dated March 17, 1931.	194	233
Journal entry No. 1876, dated April 10, 1931	196	235
Journal entry No. 1880, dated April 15, 1931.	198	238
No. 34—Petition of Otto Bradford in cause No. 10326	200	241
No. 35—Order No. 5548 by Corporation Commission, June 27, 1931	202	243
No. 36—Order No. 847 by Corporation Commission, October 1, 1914	203	243
No. 37—Order No. 846A by Corporation Commission, no date	204	244
No. 38—Order No. 844 by Corporation Commission, fixing 75¢ price for crude	206	246
No. 39—Order No. 846 by Corporation Commission on September 22, 1914	207	247
No. 40—Order No. 1022 by Corporation Commission on February 18, 1916	228	264
No. 41—Transcript C. C. Julian case before Oklahoma supreme court	234	269
No. 42—Map of part Oklahoma City field, Morgan well area	262	302a
No. 43—April overs and unders	264	303
No. 44—Report and recommendations in re gas conservation and water intrusion, Oklahoma City field	265	303
Defendants' exhibits in evidence	282	315

	Original	Print
No. 1—Production in barrels, Champlin wells, Oklahoma City	282	315
Narrative statement of evidence before Corporation Commission, October, 1930	283	315
No. X—Potentials, Oklahoma City field, January and April	345	363
No. Y—Summary of January and April potentials by companies	382	426
No. Z—Status of estimated wells, June 19, 1931	385	428
No. A—Order No. 820 by Corporation Commission on July 1, 1914	388	432
No. B—Order No. 878 by Corporation Commission, November 26, 1914	393	437
No. C—Order No. 920 by Corporation Commission, June 5, 1915	396	440
No. D—Letter of instruction, dated June 10, 1915	412	459
Clerk's certificate to exhibits....(omitted in printing)	418	

[fols. a-1-3] Citation, in usual form, showing service on Jesse L. Ballard et al., filed October 19, 1931, omitted in printing.

[fols. 4-6] Citation, in usual form, showing service on Geo. S. Ramsey, et al., filed October 22, 1931, omitted in printing.

[fol. 7]

IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

Equity. No. 1156

CHAMPLIN REFINING COMPANY, a Corporation, Plaintiff,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA et al., Defendants

ORDER EXTENDING TIME WITHIN WHICH TO FILE RECORD IN THE SUPREME COURT OF THE UNITED STATES—Filed Oct. 17, 1931

For satisfactory reasons appearing to the Court, the time for filing the record in this cause in the Supreme Court of the United States, pursuant to the appeal sued out, is extended until the 25th day of November, 1931.

Dated this the 15 day of October, 1931.

John H. Cotteral, Circuit Judge. Orie L. Phillips, Circuit Judge. F. E. Kennamer, District Judge.

[File endorsement omitted.]

[fol. 8] IN UNITED STATES DISTRICT COURT

ORDER DESIGNATING JUDGE—Filed Dec. 31, 1930

UNITED STATES OF AMERICA,
Tenth Circuit:

In my judgment the public interests require the designation and appointment of a Judge of this Circuit to hold and

assist in holding the District Court of the United States for the Western District of Oklahoma, in place or in aid of the District Judge of that District:

I do, therefore, by these presents designate and appoint the Honorable Franklin E. Kennamer, United States District Judge for the Northern District of Oklahoma, to hold or assist in holding the District Court of the United States in and for the several divisions of the Western District of Oklahoma, at the times and places appointed by law for holding said court, from January 1, 1931, until December 31, 1931, inclusive, in place or in aid of the Honorable Edgar S. Vaught, United States District Judge for the said Western District of Oklahoma.

Witness my hand this 29th day of December, A. D. 1930.

Robert E. Lewis, Senior Circuit Judge.

[File endorsement omitted.]

[fol. 9] IN UNITED STATES DISTRICT COURT

NOTICE—Filed Dec. 10, 1930

To the Honorable William J. Holloway, Governor of Oklahoma; Honorable J. Berry King, Attorney General; the Corporation Commission of the State of Oklahoma, C. C. Childers, Fred Capshaw, and E. R. Hughes:

This is to notify you, and each of you that the Champlin Refining Company, a corporation of Enid, Oklahoma, plaintiff in the above entitled cause, has filed in the United States District Court for the Western District of Oklahoma, its application for a hearing for a temporary injunction and its Second Amended and Supplemental Bill of Complaint in cause Number 1156, Equity, and under the allegations of said Second Amended and Supplemental Bill of Complaint and said application asks an immediate hearing in said Court for a temporary injunction, and the same will be heard on Wednesday, December 17th, 1930, at the hour of ten o'clock A. M., or as soon thereafter as the court can hear the same, at the United States District Court room in the Federal Building at Oklahoma City, Oklahoma. A copy of said Second Amended and Supple-

mental Bill of Complaint is hereto attached and furnished herewith.

Dated this 6th day of December, 1930.

Champlin Refining Company, by Horace G. McKeever, Its Attorney.

Received the within Notice at Oklahoma City, Dec. 9th, 1930, and executed the same by delivering a true copy for J. Berry King, Atty. General to W. C. Lewis, Asst. Atty. Gen. Dec. 9th 1930, and copy hereof together with a copy of the petition for the Corporation Commission of the State of Oklahoma, to C. C. Childers, Chairman, in person, and a copy hereof together with a copy of the petition for William J. Holloway, Governor of the State of Oklahoma, to him in person Dec. 10th, 1930, all at Oklahoma City, Okla.

Richard B. Quinn, U. S. Marshal, by A. J. Thrasher, A. J. Thrasher, Deputy.

[File endorsement omitted.]

[fol. 10] IN UNITED STATES DISTRICT COURT

ORDER DENYING APPLICATION FOR TEMPORARY INJUNCTION—Filed Feb. 9, 1931

On this day the application of the plaintiff for a temporary injunction in said cause, presented in the amended and supplemental Bill herein against the enforcement by the defendants of oil proration orders of the Corporation Commission of the State of Oklahoma, and duly submitted upon the evidence of the parties and the arguments of counsel, January 2 and 3, 1931, comes on for determination, and after due consideration of the same, it is by the Court

Ordered, that said application be denied. To this order, the plaintiff at the time duly excepts.

Guthrie, Oklahoma, February 9, 1931.

John H. Cotteral, Circuit Judge. R. L. Williams, District Judge. —— ——, District Judge.

I dissent to the findings of fact by the majority of the court for the reason the complainants make no objection

to any order that the Corporation Commission may make enjoining actual waste.

F. E. Kennamer, District Judge.

[File endorsement omitted.]

[fol. 11] IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed April 22, 1931

The above named plaintiff, conceiving himself aggrieved by the decree and order made in the above entitled cause on the 9th day of February, 1931, denying its application for a temporary injunction, does hereby appeal from said order and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors, which is filed herewith, and prays that the appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which said decree and order was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this the 22nd day of April, 1931.

Horace G. McKeever, Harry O. Glasser, Geo. S. Ramsey, Edgar S. de Meules, Attorneys for Plaintiff-Appellee.

[File endorsement omitted.]

[fol. 12] IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL—Filed April 22, 1931

Now, on this 22nd day of April, 1931, came the plaintiff Champlin Refining Company, a corporation, by its attorneys and files herein and presents to the Court its petition praying for the allowance of an appeal to the Supreme Court of the United States, and it appearing that the plaintiff has filed therewith its Assignment of Errors, and the Court being fully advised in the premises does hereby allow an appeal to the Supreme Court of the United States

as prayed for upon the filing of a bond in the sum of $1000.-00 with good and sufficient surety to be approved by the Court.

John H. Cotteral, Circuit Judge. R. L. Williams, F. E. Kennamer, District Judges.

[File endorsement omitted.]

[fol. 13] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE TO THE GOVERNOR OF THE STATE OF OKLAHOMA—Filed June 13, 1931

To the Honorable William H. Murray, Governor of the State of Oklahoma:

You are hereby notified that the plaintiff in the above entitled action has filed its application praying for a temporary injunction against each and all of the above named defendants in the above entitled cause from imposing upon this plaintiff any of the statutory penalties provided in the Act of the Oklahoma Legislature approved February 11th, 1915, and from any of the statutory penalties for the violation of any orders, rules and regulations made and entered pursuant thereto by the Corporation Commission of the State of Oklahoma, and that such application for a tem-[fol. 14] porary injunction is set for hearing at the court room of the United States District Court for the Western District of Oklahoma at Guthrie, Oklahoma, at the hour of 9:00 o'clock A. M., on June 13th, 1931.

Dated this 8th day of June, 1931.

Horace G. McKeever, Harry O. Glasser, Geo. S. Ramsey, Edgar S. deMeules, Attorneys for Plaintiff.

Service of the above notice and the receipt of a copy thereof are hereby acknowledged to have been made on me as Governor of the State of Oklahoma, on this 8th day of June, 1931.

Wm. H. Murray, The Governor of the State of Oklahoma.

[File endorsement omitted.]

[fol. 15] IN UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF OKLAHOMA

No. 1156. Equity

CHAMPLIN REFINING COMPANY, a Corporation, Plaintiff,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA and Paul Walker, E. R. Hughes and C. C. Childers, constituting the Corporation Commission of the State of Oklahoma, and Their Successors in Office, and Paul Walker, E. R. Hughes, and C. C. Childers, and J. Berry King, as Attorney General of the State of Oklahoma, and J. Berry King, and Lewis R. Morris, as County Attorney of Oklahoma County, State of Oklahoma, and Lewis R. Morris, Defendants

THIRD AMENDED AND SUPPLEMENTAL BILL OF COMPLAINT FILED BY LEAVE OF COURT—Filed Aug. 3, 1931

Comes now the Champlin Refining Company, a corporation, as plaintiff, and by leave of court files this its third amended and supplemental bill of complaint as an amendment to its original bill and amended and supplemental bill and to its second amended and supplemental bill and substitute for all bills and amended bills herein, and herein alleges that it filed its original bill in this cause on September 17th, 1930, to restrain the enforcement of the Oil Curtailment Act hereinafter referred to, and on October 29th filed its second amended bill and supplemental bill, and on December 2, 1930, its supplemental and amended bill, and on May 29, 1931, its supplemental and amended bill, and further alleges:

I

That it is a corporation organized and existing under and by virtue of the laws of the State of New Mexico and it is a citizen of said state; that the defendants, Paul Walker, E. R. Hughes and C. C. Childers, and their successors in the office of Corporation Commissioners of the State of Oklahoma, are citizens of the State of Oklahoma with their resi-

dence and domicile in the Western Federal Judicial District of the State of Oklahoma.

[fol. 16] That the defendant J. Berry King is the duly elected, qualified and acting Attorney General of the State of Oklahoma; that he is a resident and citizen of Oklahoma County, Oklahoma; that the defendant Lewis R. Morris is the duly elected, qualified and acting county attorney in and for Oklahoma County, State of Oklahoma; that he is a resident and citizen of said county and state.

II

That it has complied with the Constitution and laws of the State of Oklahoma regulating the admission of foreign corporations to do business in the State of Oklahoma and is now and had been for a long time prior to the commencement of this suit doing business in the State of Oklahoma, with its principal office and place of business in the City of Enid, Garfield County, State of Oklahoma.

III

That the matter herein in controversy is in excess of $3,000.00 exclusive of interest and costs and arises under the Constitution and laws of the United States.

IV

That the Corporation Commission of the State of Oklahoma is a board created and vested with certain powers by Article 9 of the Constitution of the State of Oklahoma; that the defendants Paul Walker, E. R. Hughes and C. C. Childers are the duly elected, qualified and acting Corporation Commissioners of the State of Oklahoma; that at all times herein mentioned prior to January 10, 1931, the defendant Fred Capshaw was a duly elected, qualified and acting member of the Corporation Commission of the State of Oklahoma; that his term of office as such member expired on the 10th day of January, 1931; that Paul Walker having been duly elected as a member of said Corporation Commission qualified as such member on the 10th day of January, 1931, and since then has been and is now a duly elected, qualified and acting member of the Corporation Commission of the State of Oklahoma; that subsequently an order

was entered in this cause permitting it to be continued and maintained against Paul Walker as successor in office to [fol. 17] the defendant Fred Capshaw as a member of the Corporation Commission of the State of Oklahoma and substituting the said Paul Walker as a party defendant in lieu of said Fred Capshaw.

V

That it is now and has been since its incorporation engaged in the business of producing and refining crude oil and transporting and marketing petroleum, natural gas and their products in interstate and intrastate commerce; that it owns and operates an oil refinery at Enid, Oklahoma, with a capacity of refining 15,000 barrels of crude oil per day; that said refinery plant refines and manufactures gasoline, kerosene, lubricating oils, waxes, greases and other by-products; that it owns approximately 735 tank cars which it uses in the distribution of its refined products among its customers in Oklahoma, Texas, Colorado, Kansas, Arkansas, Missouri, Minnesota, Iowa, Nebraska, South Dakota, North Dakota, Wisconsin, Michigan, Illinois, New Mexico and California, and controls and operates approximately 470 miles of pipe line for the transportation of oil and gas in Oklahoma and other states and owns and operates approximately 263 retail gasoline filling stations and 256 wholesale gasoline stations in the State of Oklahoma, Kansas, Texas, Iowa, Colorado and Illinois, which it supplies from its Enid refinery, all of which represent an investment of several million dollars.

VI

That it is the owner and holder of oil and gas leases now and at all times mentioned in this bill in full force and effect on—

Lots 30, 31, 32, 33, 34, 35, 50 and 51, Block 2 of Roosevelt Place Addition to the City of Oklahoma City, Oklahoma, as shown by the recorded plat thereof.

Lots 23, 24, 25 and 26, Block Nine (9), Armourdale Addition to Oklahoma City, Oklahoma, same being a subdivision of the Northwest Quarter in Section Two (2), Township [fol. 18] Eleven (11) North, Range Three (3) W. I. M.,

Oklahoma County, Oklahoma, containing ½ acre, more or less.

All of Lots 3 to 20, inclusive, in Block Six (6), and all of Block Five (5) of Compton Park Addition to Oklahoma City, Oklahoma, according to the recorded plat thereof, containing 5 acres, more or less, being located in the Southwest Quarter (S. W. ¼) of Section 2-11 N-3 W., Oklahoma County, Oklahoma.

All of Block Seven (7) in Central Addition to Oklahoma City, Oklahoma County, Oklahoma, containing 4.07 acres, more or less, composed of fifty 25-foot lots.

All of Block Eight (8) in Central Addition to Oklahoma City, Oklahoma County, Oklahoma, containing 4.07 acres, more or less, composed of fifty 25-foot lots.

All of Block Fifteen (15) in Central Addition to Oklahoma City, Oklahoma County, Oklahoma, containing 3.91 acres, more or less, composed of forty-eight 25-foot lots.

All of Block Nineteen (19) in Central Addition to Oklahoma City, Oklahoma County, Oklahoma, containing 3.91 acres, more or less, composed of forty-eight 25-foot lots.

All of Block Twenty-two (22) in Central Addition to Oklahoma City, Oklahoma County, Oklahoma, containing 3.88 acres, more or less, composed of forty-eight 25-foot lots.

All of Block Twenty-three (23) in Central Addition to Oklahoma City, Oklahoma County, Oklahoma, containing 2.11 acres, more or less, composed of twenty-four 25-foot lots.

All of Block Eighteen (18), Schilling Addition to Oklahoma City, Oklahoma County, Oklahoma, containing 3.16 acres, more or less, composed of Thirty-six (36) 25-foot lots.

All of Block Eleven (11) in Eckroat Addition to Oklahoma City, and all of Block Two (2) in Layman's Addition to Oklahoma City, Oklahoma County, Oklahoma, containing 3.95 acres, more or less, consisting of 44 lots, and [fol. 19] in what is generally known as the "Oklahoma City oil field"; that it is also and has been at all times herein mentioned the owner of oil and gas mining leases on the

East Half of the Southeast Quarter of the Northeast Quarter of Section 14, Township 7 North, Range 6 East, and an undivided one-half interest in the South Half of the South-

west Quarter of Section 9, Township 6, Range 6, all lying in Seminole County, State of Oklahoma,

and in what is generally known as the "Greater Seminole oil field."

And also is the owner of an oil and gas lease covering The Southeast Quarter of the Southeast Quarter and the South Half of the Northeast Quarter of the Southeast Quarter of Section 25, Township 23, North of Range 4 West, Garfield County, Oklahoma,

on which there is a producing well which is surrounded by approximately 600 acres of oil and gas leases owned by this plaintiff, and near which well there are no other producing wells, nor are there any correlative leasehold owners of the oil and gas rights in said pool from which said producing well obtains its production, and that there are no neighboring oil and gas leases whose lands are being drained by said well.

VII

That at an approximate cost of $1,250,000.00, it has drilled and completed nine (9) producing wells on the above described property in the Oklahoma City oil field, which wells have an aggregate potential capacity of 151,000 barrels of crude oil per day; and that it is now drilling one (1) additional well in the said Oklahoma City oil field, which well will cost approximately $140,000.00, and may reasonably be expected to produce an aggregate of 30,000 barrels of crude oil per day.

VIII

That the words "potential capacity" or "potential production" as herein used and as used in the findings and orders of the Oklahoma Corporation Commission, hereinafter referred to, mean the production of oil from a well or given wells without restriction and/or without pinching them or restraining the natural flow or the maximum flow [fol. 20] by pumping.

IX

That before any of the orders of the Corporation Commission herein complained of were made and promulgated

it has drilled and equipped nine wells on the said leases in the Greater Seminole Field with a potential capacity of 450 barrels of crude oil per day at the time this suit was filed on September 15th, 1930, at an approximate cost of $569,000.00.

X

That it owns and operates other oil and gas leases on lands in other oil and gas fields in Oklahoma in addition to those above described, which are also affected by the orders of the Oklahoma Corporation Commission herein complained of, with a potential capacity of approximately 1200 barrels of crude oil per day.

XI

That the Oklahoma Legislature passed an act (chapter 25, Cession Laws 1915, page 28) approved February 11th, 1915, entitled "An Act defining and prohibiting the waste of crude oil or petroleum, providing for the equitable taking of the same from the ground and conferring authority on the Corporation Commission, prescribing the penalty for the violation of this act, and declaring an emergency," whereby it was enacted, in the first section thereof, "That the production of crude oil or petroleum in the State of Oklahoma, in such manner and under such conditions as to constitute waste, is hereby prohibited;" that the second section of said act prohibited "the taking of crude oil or petroleum from any oil-bearing sand or sands in the State of Oklahoma at a time when there is not a market demand therefor at the well at a price equivalent to the actual value of such crude oil or petroleum" and declared that the "actual value of such crude oil or petroleum at any time shall be the average value as near as may be ascertained in the United States at retail of the by-products of such crude oil or petroleum when refined less the cost and a reasonable profit in the business of transporting, refining and marketing the same" and vested the Corporation Commission [fol. 21] "with the authority and power to investigate and determine from time to time the actual value of such crude oil or petroleum by the standard herein provided" and declared that "when so determined said Commission shall promulgate its findings by its orders duly made and recorded, and publish the same in some newspaper of general

circulation in the state;" that the 3rd, 4th and 5th sections of said act are as follows:

"Sec. 3. That the term 'waste' as used herein, in addition to its ordinary meaning, shall include economic waste, underground waste, surface waste and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands. The Corporation Commission shall have authority to make rules and regulations for the prevention of such wastes, and for the protection of all fresh water strata, and oil and gas bearing strata, encountered in any well drilled for oil.

"Sec. 4. That whenever the full production from any common source of supply of crude oil or petroleum in this state, can only be obtained under conditions constituting waste, as herein defined, then any person, firm or corporation, having the right to drill into and produce oil from any such common source of supply, may take therefrom only such proportion of all crude oil and petroleum that may be produced therefrom, without waste, as the production of the well or wells of any such person, firm or corporation, bears to the total production of such common source of supply. The Corporation Commission is authorized to so regulate the taking of crude oil or petroleum from any or all such common sources of supply, within the State of Oklahoma, as to prevent the inequitable or unfair taking, from a common source of supply of such crude oil or petroleum, by any person, firm, or corporation, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another.

[fol. 22] "Sec. 5. That for the purpose of determining such production, a gauge of each well shall be taken under rules and regulations to be prescribed by the Corporation Commission, and said Commission is authorized and directed to make and promulgate, by proper order, such other rules and regulations, and to employ or appoint such agents with the consent of the governor, as may be necessary to enforce this act.";

that the 6th section provides for a hearing before the Corporation Commission, and the 7th section confers upon the Supreme Court of the state "appellate jurisdiction" to

"review the action of said Commission in making any order, or orders, under this act, and authorizes an appeal "by any person, firm or corporation, shown by the record to be interested therein" and directs that "orders so appealed from shall not be superseded by the mere fact of such appeal being taken, but shall be and remain in full force and effect until legally suspended or set aside by the Supreme Court."

Sections 8 and 9 are as follows:

"Sec. 8. That in addition to any penalty that may be imposed by the Corporation Commission for contempt, any person, firm or corporation, or any officer, agent or employee thereof, directly or indirectly violating the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof, in a court of competent jurisdiction, shall be punished by a fine in any sum not to exceed five thousand dollars ($5,000.00) or by an imprisonment in the county jail not to exceed thirty (30) days, or by both fine and imprisonment.

"Sec. 9. That in addition to any penalty imposed under the preceding section, any person, firm or corporation, violating the provisions of this act, shall be subject to have his or its producing property placed in the hands of a receiver by a court of competent jurisdiction, at the suit of the state through the attorney general or any county [fol. 23] attorney, but such receivership, shall only extend to the operating of producing wells and the marketing of the production thereof, under the provisions of this act."

Section 10 provides "that the invalidity of any section, subdivison, clause or sentence of this act shall not in any manner affect the validity of the remaining portion thereof."

XII

That the material portions of the above act approved February 11th, 1915, are embodied in sections 7954 to 7963, inclusive, Oklahoma C. L. 1921, and will hereinafter be referred to as the "Oil Conservation Act" or "Conservation Act."

XIII

That the Oklahoma Legislature at its 1907-8 session (see section 3498, O. C. L. 1921) passed an act empowering the Corporation Commission to impose a fine upon "any cor-

poration, person or firm" violating "any of its rules or requirements" and made "each day's continuance of such violation, after due service upon such corporation, person or firm, of the order or requirement of the Commission" a separate offense, with the provision "that should the operation of such order or requirement be suspended, pending an appeal therefrom, the period of such suspension shall not be computed."

XIV

That assuming that said "Oil Conservation Act" is valid and constitutional legislation and that it vested them with authority to do so, the defendants, the Corporation Commission of the State of Oklahoma as then constituted, made and entered on June 30th, 1930, an order, No. 5189, in Corporation Commission cause No. 10146, the effect of which, if valid, was to restrict and curtail the production of crude oil in the Oklahoma City oil field, Greater Seminole oil field, and several other oil fields in the State of Oklahoma in which plaintiff owned and operated and now owns and operates the oil and gas wells heretofore referred to and other oil and gas wells, a copy of which order is hereto attached and made a part hereof as Exhibit "A"; and that in para- [fol. 24] graph (f) of the findings of fact in said order the Commission found as a fact, without any evidence before it, that "the potential production of crude oil from existing wells in Oklahoma on and following the first day of July, 1930, will be approximately 1,362,000 barrels per day, and that the daily demand from Oklahoma is and will be approximately 650,000 barrels per day during the months of July, August and September, 1930," and "that, therefore, there is an excess of potential production over consumption of 712,000 barrels per day which cannot be produced without waste as defined by the statutes of Oklahoma," and that "if no restraint were placed upon producing wells * * * or upon wells hereafter drilled during the months of July, August and September, the potential production of the State of Oklahoma would be much greater than 1,362,000 barrels per day and would exceed all transportation and marketing facilities and reasonable market demands to such an extent as to force large quantities of oil into earthen storage in this state and otherwise cause waste of a character prohibited by the laws of the State of Okla-

homa," and that "In order to prevent such waste, the Commission finds that it is necessary to curtail the production from the pools" described in the petition "during the said months of July, August and September, 1930," according to a schedule therein set forth by which the Oklahoma City field was restricted to a production of 130,037 barrels per day out of a 600,000-barrel per day potential; that by the decretal part of the said order the oil production was limited to an average of 650,000 barrels per day during July, August and September, and the Oklahoma City field was not allowed to produce a maximum of more than 25 per cent of its potential production; that the Greater Seminole field was limited to two-thirds of its potential production during said months, the East Earlsboro and South Earlsboro pools were limited to one-third of their potential production, and three other designated pools limited to one-fourth of their potential production during said months, and the Commission by its said order expressly retained jurisdiction to make supplementary and ancillary orders from time to time as required by new developments "and as instructions to [fol. 25] the Umpire and Operators' Committee" and authorized the Umpire and Operators' Committee to report the facts to support any supplemental or ancillary order.

XV

That assuming that said "Oil Conservation Act" is valid and constitutional legislation and that it vested them with authority to do so, the defendants, the Corporation Commission of the State of Oklahoma, as then constituted, made and entered on August 30th, 1930, an order, No. 5292, in Corporation Commission cause No. 10146, the effect of which, if valid, was to further restrict and curtail the production of crude oil in the Oklahoma City field, the Greater Seminole oil field, and other oil fields in Oklahoma in which the plaintiff then owned and now owns and operates oil producing wells, a copy of which order is hereto attached and made a part hereof as Exhibit "B"; that in said order the Commission found as a fact that the potential production of crude oil in Oklahoma had then increased to 1,481,118 barrels per day and that the reasonable market demand had decreased from 650,000 barrels to 550,000 barrels per day since June 30th, and that it was necessary to further curtail the output of crude petroleum in Oklahoma; found

that the potential production in the Oklahoma City field was 700,000 barrels per day and curtailed the production of crude oil in that field from 130,037 barrels per day to 88,903 barrels per day, and in said order prohibited the production of oil in the Greater Seminole field in excess of 50 per cent of the potential production, cut the production in some fields to one-fourth of the potential and the Oklahoma City field to 18¾ths per cent of its potential during the month of September, but did not undertake to curtail the production in smaller fields having a production of 260,000 barrels per day, and in said order retained jurisdiction to make supplemental and ancillary orders from time to time as required by new developments and as recommended by the Umpire and Operators' Committee upon their report of facts showing the necessity thereof, and thereby modified its former order shown by Exhibit "A" hereto attached.

[fol. 26]

XVI

That the defendants, the Corporation Commission of the State of Oklahoma, as then constituted, made, entered and promulgated said orders shown by Exhibits "A" and "B" hereto attached without having heard the testimony of any witness under oath and without having heard and considered any sort of legal evidence upon which to base either of said orders; that without any legal evidence of any sort before it said defendants, acting as the Corporation Commission of Oklahoma, did on September 30th, 1930, make and enter order No. 5337 in said Corporation Commission cause No. 10146, extending orders Nos. 5189 and 5292 in full force and effect until and including October 10th, 1930, as shown by Exhibit "C" attached hereto.

XVII

That assuming that said "Oil Conservation Act" is valid and constitutional legislation and that it vested them with authority to do so, the defendant, the Corporation Commission of the State of Oklahoma as then constituted, made and entered on October 28th, 1930, an order, No. 5369, in Corporation Commission cause No. 10146, the effect of which, if valid, was to further restrict and curtail the production of crude oil in wells producing over 5 barrels per day in all fields in the State of Oklahoma, in-

cluding the Oklahoma City and Greater Seminole fields, a copy of which order is hereto attached and made a part hereof as Exhibit "D"; that in said order defendants found that the potential daily production of crude oil from the wells in Oklahoma during the month of October, 1930, is and will be approximately 3,638,478 barrels and that during the months of November and December, 1930, the said potential daily production will be 4,142,872 barrels and 4,244,294 barrels respectively, and that the daily demand for crude oil from Oklahoma is and will be approximately 550,000 barrels in October, 545,000 barrels in November, and 535,000 barrels in December, 1930"; that said order contained a "proration schedule" for the period between October 1st and December 21st, 1930, in which it is found and ordered that the Oklahoma City field for October had a potential production of 2,200,000 barrels, of which [fol. 27] amount it was restricted to a daily production of 131,095 barrels, for November a potential production of 3,319,000 barrels with production restricted to 134,589 barrels per day, and for December a potential daily production of 3,446,000 barrels with an allowed production per day of 131,003 barrels; that jurisdiction over the cause was expressly retained by the Commission.

XVIII

That assuming that said "Oil Conservation Act" was valid and constitutional legislation and that it vested them with authority to do so, the defendants, the Corporation Commission of the State of Oklahoma as then constituted, made and entered on December 30, 1930, an order known as order No. 5414 in Corporation Commission cause No. 10,326, prescribing the method of gauging the wells in the Oklahoma City oil field, a copy of which order is hereto attached, marked Exhibit "E" and made a part hereof.

XIX

That on February 10th, 1931, the Corporation Commission of Oklahoma made and entered an order known as order No. 5437, in Corporation Commission cause No. 10,326, in which order it was purported to be found that

the market demand from the Oklahoma City field had increased, and by which order the allowed production from the Oklahoma City field was increased to 125,000 barrels per day, a copy of which order is hereto attached, marked Exhibit "F" and made a part hereof; that the Corporation Commission, on the 4th day of March, 1931, made a verbal announcement that an order would be made and entered, by which the defendant Corporation Commission of Oklahoma would find that the market demands from the Oklahoma City field has increased to 150,000 barrels per day, and by which order the allowed production from said field would be increased to 150,000 barrels per day; that immediately following said announcement, the Stanolind Crude Oil Purchasing Company reduced its price for oil purchased from the State of Oklahoma from $1.97 to $.67 per barrel for 40 gravity oil and above, with corresponding decreases for lower grades of oil; that upon the publication of said price cut, the defendant Corporation Commission of Oklahoma, on March 5th, 1931, at the writ- [fol. 28] ten request of the Governor of the State of Oklahoma, made and entered an order, known as journal entry No. 1856, by which it rescinded the verbal order herein referred to and decreased the allowed production from the Oklahoma City field to 125,000 barrels per day, a copy of which journal entry is hereto attached, marked Exhibit "G" and made a part hereof; and that on April 17, 1931, the Corporation Commission made and entered an order known as order No. 5468 in Corporation Commission cause No. 10326, a copy of which is hereto attached marked Exhibit "H" and made a part hereof; and that on May 28, 1931, the Corporation Commission made and entered an order known as order No. 5486 in Corporation Commission cause No. 10326, a copy of which is hereto attached, marked Exhibit "I" and made a part hereof.

XIX-a

That on June 27, 1931, the Corporation Commission made and entered Order No. 5548, in Commission case No. 10326, a copy of which is hereto attached and made a part hereof as Exhibit "M", and did thereafter on June 29th, 1931, make and enter a further order, No. 5549, in the same cause, a copy of which is hereto attached and made a part hereof as Exhibit "N".

XX

That in its order of June 30th, 1930, shown by Exhibit "A" hereto, Ray M. Collins was appointed by the Oklahoma Corporation Commission as its umpire and agent "to enforce the rules and regulations" therein made, and was authorized to employ assistants to aid him in administering the rules and regulations; that the said appointment has been continued in the later orders herein mentioned and the said Ray M. Collins is now and has been for many months prior hereto the umpire for the defendants, purporting to act as the agent and representative of the Corporation Commission of Oklahoma, whereas in fact said Collins is not now and never has been a legal agent of the Corporation Commission and is not now and never has been an officer of the State of Oklahoma with any authority to act in respect to the matters covered by the said Act of Legislature approved February 11th, 1915, or the rules and regulations made thereunder by the Cor- [fol. 29] poration Commission; that in its said order No. 5369, shown by Exhibit "D" hereto attached, the defendants again appointed Ray M. Collins as "umpire and agent of the Commission to enforce the rules and regulations herein made and he is hereby authorized to employ as many assistants as he shall deem necessary;" that as a fact said Ray M. Collins is now and has been at all times while acting under purported authority from the Corporation Commission of Oklahoma the paid employee and representative of numerous persons, firms and corporations producing oil in the various Oklahoma fields and engaged in the manufacture of refined products and marketing the same in competition with complainant; that said Ray M. Collins, for his services in acting as the appointed agent and umpire of the Corporation Commission, is now and has been receiving a monthly salary at the rate of $24,000.00 per year from various firms, persons and corporations engaged in the production of crude oil in Oklahoma and the refining of crude oil in competition with complainant; that said Collins has neither been paid nor promised by the State of Oklahoma or any political subdivision thereof any compensation for his services as alleged umpire and agent of the said Commission; that said Collins has at all times acted in conjunction

with and in the service of a so-called Operators' Committee composed of various individuals producing oil in Oklahoma and representatives of firms and corporations producing crude oil in Oklahoma fields and manufacturing the refined products therefrom and marketing the same.

XXI

That the Commission's order No. 5189, made on June 30th, 1930, provides that:

"The gauge to determine potential shall be taken by each operator in the pool in respect of the lease or leases owned by him therein and then producing, such gauge to be taken between the hours of seven A. M. on the day set by the umpire and seven A. M. on the following day. Prior to the taking of such gauge and in respect of each producing lease covered hereby, the umpire shall appoint a representative of an operator owning a lease adjoining the par-
[fol. 30] ticular property to be gauged, and shall notify the operator whose property is to be gauged of the name of the representative, such notification to be given prior to the taking of such gauge. It shall be the positive duty of such representative to remain on the lease that is being gauged throughout the entire day that the gauge is being taken to witness the gauging of the production therefrom, and immediately upon the completion of such gauge, such witness and the operator whose property was gauged shall file a written statement with the umpire showing the production of said lease, and of each well thereon for the day said gauge is taken. The production so shown shall constitute the potential for said lease until the next gauge is taken."

That in its said order No. 5369, made on October 28th, 1930, it is provided that:

"The gauge to determine potential shall be taken by each operator in the pool in respect of the lease or leases owned by him therein and then producing, such gauge to be taken between the hours of seven A. M. on the day set by the order of the Commission, and seven A. M. on the following day. Prior to the taking of such gauge and in respect of each producing lease covered hereby the umpire shall appoint a representative of an operator owning a

lease adjoining the particular property to be gauged, and shall notify the operator whose property is to be gauged of the name of the representative, such notification to be given prior to the taking of such gauge. It shall be the positive duty of such representative to remain on the lease that is being gauged throughout the entire day that the gauge is being taken to witness the gauging of the production therefrom; and immediately upon the completion of such gauge, such witness and the operator whose property was gauged shall file a written statement with the umpire showing the production of said lease, and of each well thereon for the day said gauge is taken. The production so shown shall constitute the potential for said lease until the next gauge is taken."

[fol. 31]

XXII

That the oil wells in the Oklahoma City field have never been gauged by the Oklahoma Corporation Commission or by any competent and legally qualified agent of said Commission or legal and qualified officer of the State of Oklahoma; that the Commission's findings of the potential production in the Oklahoma City field, set forth in the various orders hereto attached as exhibits, were not based upon any gauge of the wells in said field; that the Commission's findings of the potential production in the Seminole field and other fields, set forth in said orders, were not based upon any gauge of the wells in said respective fields; that no legal and lawful gauge as provided by the Oklahoma statutes has ever been made by said Corporation Commission or under any valid rules prescribed by said Commission; that the Governor of the State of Oklahoma has never consented to the employment or appointment of agents to make the gauge, as required by section 7958, O. C. L. 1921.

XXIII

That various persons, firms and corporations owning and operating oil wells in the Oklahoma City field, Greater Seminole field and some of the other fields, organized what is known and referred to in the Commission's rules, regulations and orders herein complained of as an "Operators' Committee"; that said Operators' Committee is composed of plaintiff's competitors; that said Operators' Committee procured the Corporation Commission to name

one of their employees, Otto B. Bradford, as a so-called umpire for the Oklahoma City oil field; that acting under the directions of the Operators' Committee, approved by the Corporation Commission, it was the business of Otto B. Bradford, as alleged umpire, to see that the producers of oil in the Oklahoma City field kept their wells closed down on said proration basis and production allowed upon an unfounded and unwarranted estimation of the potential production of the Oklahoma City field; that said Otto B. Bradford is not and never has been an agent or representative of the State of Oklahoma or a political subdivision. [fol. 32] thereof; that he has neither received nor been promised by the State of Oklahoma or any authorized agent of the State of Oklahoma or political subdivision thereof, any compensation for his service as alleged umpire; that said Bradford has been receiving from the Operators' Committee compensation for his services and all his acts and deeds have been illegal and unauthorized by any valid rule and regulation of the Commission or by the provisions of any statute of the state.

XXIV

That neither the Conservation Act nor the rules, regulations and orders of the Corporation Commission requires nor provides or provided for notice of time and place to plaintiff or to any other operators in the Oklahoma field of a pretended gauge or any effort to gauge the wells of the other operators; that no provision is made in said Conservation Act nor in the rules and regulations of the Commission for notice to the owners of oil wells in the Seminole field that at a certain time and place a gauge will be made of the production of oil in wells in the Oklahoma City field and no provision is made by said Conservation Act or the Commission's rules and regulations for notice to the plaintiff of the time and place of any gauge of the oil produced from wells in the Oklahoma City field other than wells on its own leases or wells on leases or lands adjoining its leases in the Oklahoma City field; that it never received any notice of the time and place of gauging the production of oil from wells of other operators in the Oklahoma City field, or in the Seminole field, or the East or South Earlsboro fields, or in other fields described in the Commission's rules and regulations, subjecting them to its proration orders, that although

the Commission's order, rules and regulations herein complained of condition plaintiff's right to produce the full capacity of its wells upon the potential production of the wells of other owners in the Oklahoma City field, Greater Seminole field, and other prorated fields, neither the Conservation Act nor the rules and regulations of the Commission provide for any notice to plaintiff or to any other operator of the time and place of making gauges to determine the potential production, and no notice having been [fol. 33] provided for by said Conservation Act or the Commission's rules and regulations, and no notice of any intended gauge having been served upon it, the rules, regulations and orders of the Commission herein complained of are each and all void in that they deny plaintiff due process of law guaranteed to it by the Fourteenth Amendment to the Constitution of the United States; that the Commission's rules and regulations providing for a gauge of the wells undertakes to vest final and conclusive authority in the various and sundry owners of oil wells in said Oklahoma fields to determine, in the presence and with the consent of an adjoining operator, the amount of the potential production of the well gauged, and in undertaking to vest private owners with that authority the rules constitute an unconstitutional interference with the plaintiff's use of its property, deny plaintiff due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States, and likewise deny it equal protection of the law guaranteed by said amendment.

XXV

That it now has and has had at all times and will continue to have facilities for the transportation of its crude oil from its said leases in the Oklahoma City field, Greater Seminole field, and other fields to its Enid refinery and a market for its refined products; that neither it nor any other operator in the Oklahoma City field has produced and stored crude oil in earthen tankage or permitted it to run at large on the surface of the earth; that it is not now and has not at any time wasted any of the oil produced by it from its leases in said fields and that all the oil it can produce will be utilized for commercial purposes; that its oil wells are now and have been since completion equipped in the most modern and efficient manner for the production of oil; that

the closing in or pinching in of plaintiff's wells in said Oklahoma City field will cause water to enter the oil and gas sand, greatly damage said wells and result in material waste of oil and gas to its irreparable damage.

XXVI

That said Commission's rules, regulations and orders [fol. 34] herein complained of are arbitrary and discriminatory in that they allow oil producers in certain sections of the state to produce their wells to 100 per cent of their capacity, whereas the producers in other areas are restricted to much lower percentages and the producers in the Oklahoma City field are restricted to 2 per cent of the capacity of their wells; that it has been required and compelled by defendants to shut entirely in its wells in the Oklahoma City field and limit its production from its Greater Seminole field wells to a minimum, thus compelling it to purchase oil from other producers in order to run its refinery although it has sufficient production of its own to keep its refinery running at full capacity; that it can produce oil from its wells in the Oklahoma City and Greater Seminole fields and other fields for a less cost than the price it is now and will be compelled to pay for crude oil from other producers on the open market; that said rules, regulations and orders thereby deny it due process of law and equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States; that under present conditions and conditions existing for several months prior hereto it has been compelled to run its refinery at a loss, whereas if it is allowed to produce and refine its own production in said Oklahoma fields it can run its refinery at a profit or at least without a loss; that its refinery is equipped with the most modern and efficient stills, machinery and apparatus for the refining of crude oil into gasoline and other by-products.

That the rules, regulations and orders of said Commission, as hereinbefore set forth, are unconstitutional and void in that said orders as entered have the effect of confiscating the property of this plaintiff and for the further reason that they are in contravention of the provisions of section 2 of article 2 of the Constitution of Oklahoma, which is as follows:

"All persons have the inherent right to life, liberty, and pursuit of happiness and enjoyment of the gains of their own industry",

in that this plaintiff has rendered its property highly valuable by its own industry, and it is capable of taking there- [fol. 35] from without waste, oil in large quantities as herein otherwise set out, of which it is now deprived by said orders.

Plaintiff further alleges that the rules, regulations and orders of said Commission as heretofore set forth are unconstitutional and void under the 14th Amendment to the National Constitution in that said orders, without regard to the fact that the oil as produced in the Oklahoma City area is produced from four separate and totally distinct oil bearing sands in different geological structures, neither of which can drain the other, and one of which sands produces and will produce far more oil than the others, nevertheless the orders of said Commission treat all said sands as one common pool and thus arbitrarily discriminate against the producers, including plaintiff, having wells in the most productive of said sands, and at the same time and by these said orders the Commission allows a different percentage of production in different oil fields in Oklahoma, many miles apart and equally as incapable of draining each other as the four different oil producing sands in the Oklahoma City field are incapable of draining each other, and by these rules and regulations the Commission is and has been prorating markets in Oklahoma in an arbitrary and unreasonable manner and thus denying plaintiff the equal protection of the law as granted by the 14th Amendment to the National Constitution.

XXVII

That said rules, regulations and orders of the Commission prohibiting pipelines from running and purchasers from buying more oil from any producer than allowed by the rules, regulations and orders are void for the want of any authority to prescribe them and are intended to and actually have the effect of coercing purchasers and pipelines into submission thereto and thereby depriving plaintiff of the means of transporting its oil.

XXVIII

That many large oil corporations, firms and individuals selfishly interested in maintaining high prices for crude oil formed by agreement among themselves what is known in the rules and regulations of the Commission as an "Oper-
[fol. 36] ators' Committee" and through Ray M. Collins, said operators, competitors of the plaintiff, formulated their so-called proration orders herein complained of and submitted them to the Corporation Commission for approval; that the Commission approved and adopted said suggested rules, regulations and proration orders without sufficient appropriate or competent evidence, legally or properly to justify the entry of said orders; that said major oil companies, competitors of plaintiff, entered into an agreement, combination and confederation among themselves to limit the natural output of wells in the Oklahoma City field, Greater Seminole field, and other fields in Oklahoma and the United States, and thereby restrict production for the purpose of controlling the price of crude oil and its refined products and eliminating thereby plaintiff and others in its class as competitors, and said agreements were and are in restraint of trade and commerce among the several states and in violation of the anti-trust laws of the United States and the State of Oklahoma, "and proration orders of the Corporation Commission are a violation of section eight of article one of the Constitution of the United States."

XXIX

That C. C. Julian Oil and Royalties Company, a corporation, did on August 28th, 1930, file a petition in the Supreme Court of the State of Oklahoma wherein it alleged that it was the owner of oil and gas leases in the Oklahoma oil fields and had at that time and for some time prior thereto producing oil wells on its leases in said field and on other and additional allegations prayed the court to issue a writ of prohibition directed to the defendants and the Corporation Commission of the State of Oklahoma restraining it from enforcing its rules, regulations and proration orders set forth in Exhibit "A" to this bill; that the Supreme Court issued a temporary writ of prohibition but on motion of the Attorney General of the State vacated the temporary

writ, retaining, however, jurisdiction of the petition for the writ for decision on its merits; that thereafter and on October 14th, 1930, the court decided the cause and entered a judgment dismissing the petition for the writ of prohibition, holding thereby that the Conservation Act of the Legis- [fol. 37] lature conferred jurisdiction and authority upon the Corporation Commission to do the things complained of by the petitioner in that case.

XXX

Plaintiff alleges that the Oil Conservation Act and the separate sections thereof are unconstitutional and void for the following reasons and under the provisions of the Fourteenth Amendment to the Constitution of the United States, in that:

(a) Said act deprives plaintiff of the use of its property.

(b) Said act deprives the plaintiff of the equal protection of the laws.

(c) Said act denies the plaintiff due process of law.

(d) Said act undertakes to control and fix prices at which Plaintiff must sell or purchase crude oil.

(e) The provisions of said act are too vague and uncertain intelligently to forewarn the plaintiff and others in its class of the rule or law it must abide by in the conduct of its business.

(f) That said act is void for uncertainty and vagueness in that it does not define what is meant by (1) "Economic waste"; (2) "waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demand"; (3) "inequitable or unfair taking from a common source of supply"; (4) "unreasonable discrimination in favor of any one such common source of supply as against another."

(g) Said act is an arbitrary and unreasonable limitation on the right of plaintiff and others in its class to produce oil from its own private property and market the same at whatever price it chooses to accept therefor.

(h) Said act undertakes to limit and confine plaintiff to a taking of crude oil from the ground except in such man-

ner and on such terms as the Corporation Commission of the State of Oklahoma deems in advance of the taking is equitable and fair.

(i) Said act limits the plaintiff in the taking of crude [fol. 38] oil from its wells to an amount based on the ratio and proportion of the potential production of its wells to the potential production of all the wells in the so-called common source without in any way first defining the limitations and boundaries of the common source.

(j) Said act does not define the manner in which the extent of such common source of supply shall be ascertained or designated.

XXXI

That said Conservation Act is void in that it violates section 1 of article 4 of the Oklahoma Constitution in that it attempts to delegate to the Corporation Commission power and authority to prescribe by legislative rule the future conduct of operators of oil and gas wells in Oklahoma by preventing each from taking from a common underground reservoir of crude oil an inequitable and unfair proportion thereof; that it further violates section 1 of article 4 of the Constitution in that it confers and delegates legislative, executive and judicial authority upon the Corporation Commission.

XXXII

That it is void in that it violates section 1 of article 5 of the Oklahoma Constitution which confines all the legislative authority of the State of Oklahoma to the Legislature consisting of a Senate and House of Representatives, reserving to the people only "the power to propose laws and amendments to the Constitution and to enact or reject the same at the polls independent of the Legislature," and also reserving "power at their own option to approve or reject at the polls any act of the Legislature."

XXXIII

That the Commission's rules, regulations and orders herein complained of being based upon the findings of fact therein recited, are void in that they were made and are

maintained with threats of their enforcement in excess of the Commission's authority and powers either granted by the Constitution of Oklahoma or any statute of the state; that said Rules, regulations and orders of the Commission are void in that they undertake to regulate, control and un- [fol. 39] reasonably hamper plaintiff's business of refining oil and marketing the refined products therefrom in violation of plaintiff's rights guaranteed by the Fourteenth Amendment to the Constitution of the United States.

XXXIV

That the defendants, Hughes, Childers and Walker, as the Corporation Commission of the State of Oklahoma, are threatening to continue to make and enforce from time to time for an indefinite period its present rules regulations and orders, thereby depriving plaintiff of its rights guaranteed by the Constitution of the United States; that the aforesaid defendants, acting as the Corporation Commission of the State of Oklahoma, intend to and will make said rules, regulations and orders for a brief period of time and then shortly before the expiration thereof continue them, all for the purpose of preventing this plaintiff from presenting to this court and to the Supreme Court of the United States the issue of the validity of said rules, regulations and orders and their constitutionality and the constitutionality of the Oklahoma Oil Conservation Act; that this course of conduct has been maintained by the aforesaid defendants from month to month from June, 1930, and will hereafter be continued from month to month or for brief periods for the purpose of coercing this plaintiff and others similarly situated into an acceptance and acquiescence in their orders, rules and regulations and with the hope that this suit or any other action commenced in the Federal Court will become moot before a trial and decision can be had.

That subsequent to February 9, 1931, plaintiff, by reason of its refinery's imperative need of crude oil, which could only be supplied at reasonable cost from its own wells, and by reason of such necessity and in order that its interstate business thereby through 15 years of frugal management would not be by its competitors' self-imposed authority destroyed, and an unjust burden placed on it, produced

approximately 300,000 barrels of crude oil from its wells in the Oklahoma City field in excess of the amount which it would have been entitled to produce if the Curtailment [fol. 40] Act of 1915 and the Commission's orders herein referred to are valid. That the penalties prescribed by the Oklahoma statutes herein pointed out for violation of the orders of the Corporation Commission are void as to this plaintiff in that if said sections are imposed against this plaintiff, it will be deprived of its property without due process of law and will be denied the equal protection of the law, in contravention of the Fourteenth Amendment to the Constitution of the United States; that the penalties prescribed are so drastic that no owner of oil producing properties in the State of Oklahoma could invoke the jurisdiction of any court to test the validity of the act approved by the Oklahoma legislature on February 11th, 1915, and the orders, rules and regulations of the Corporation Commission made and entered in pursuance thereto as hereinbefore alleged except at the risk of the confiscation of his or its properties and the incurring of the payment of large sums of money by way of fines and penalties and the imprisonment of such owner and its officers, agents and employees in jail or prison for long terms; that section 9 of the Act of the Oklahoma Legislature approved February 11th, 1915, being 7962, C. O. S. 1921, irrespective of the validity of the other provisions of the act is void in that it deprives the plaintiff of its property without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States and of section seven of article 2 of the Constitution of the State of Oklahoma, and in that it constitutes an unusual punishment in contravention of section nine of article 2 of the Constitution of the State of Oklahoma, and in that it constitutes a bill of attainder in violation of section fifteen of article 2 of the Constitution of the State of Oklahoma.

That the plaintiff instituted this action and is now prosecuting the same with due diligence, and prayed and perfected its appeal from the order of this court entered on February 9th, 1931, denying its application for a temporary injunction to the Supreme Court of the United States, and is now prosecuting said appeal in that court with due diligence, in good faith and in the honest belief that said Act

of the Oklahoma Legislature approved February 11th, [fol. 41] 1915, and the orders, rules and regulations made pursuant thereto, as hereinbefore stated, are void for the reasons herein and in the second amended and supplemental bill stated.

That notwithstanding the fact that this plaintiff is, and at all times since the filing of this cause has been, in good faith testing the constitutionality of said act passed by the Oklahoma legislature, and approved on February 11th, 1915, and the validity of the orders, rules and regulations of the Corporation Commission made and entered pursuant thereto, as hereinbefore set forth, the defendant, the Corporation Commission of the State of Oklahoma, and the defendants Paul Walker, E. R. Hughes and C. C. Childers, as members thereof, acting by and through J. Berry King, Attorney General of the State of Oklahoma, did on the 28th day of May, 1931, file a petition in the District Court in and for Oklahoma County, State of Oklahoma, in a cause entitled State of Oklahoma ex Rel. J. Berry King, Attorney General, versus Champlin Refining Company, being cause No. 68950 of the causes pending in said court, wherein it is prayed that the court appoint a receiver to take possession of the producing properties of the plaintiff herein, located in the Oklahoma City oil field upon the lands hereinbefore described, alleging as cause therefor that this plaintiff has violated the provisions of the Act of the Oklahoma Legislature approved February 11th, 1915, and/or the orders, rules and regulations made and entered pursuant thereto as hereinbefore alleged, and that it is threatening to continue to violate the provisions of said act and said orders, rules and regulations, and alleging that by reason of the provisions of section 9 of the Oklahoma Legislature, approved February 11th, 1915, a receiver should be appointed; that the application for such appointment of such receiver was set for hearing in said court for the 5th day of June, 1931, that in said cause pending in the District Court of Oklahoma County, Oklahoma, the defendant J. Berry King at that time caused an order to be entered and served upon this plaintiff enjoining it from operating its wells located upon said lands, pending the hearing of the application for the appointment of a receiver, a copy of said order is hereto attached, marked Exhibit "J" and made a part hereof;

[fol. 42] That thereafter, this plaintiff exhibited in this court its amendment to its second amended and supplemental bill of complaint, wherein it prayed that the above described receivership action be dissolved and that the said J. Berry King and the said Louis R. Morris be enjoined from bringing in such further action against this plaintiff during the period in which this plaintiff should be testing the constitutionality of the above described conservation law; that on the 13th day of June, 1931, this honorable court made and entered an order restraining the defendants Paul Walker, E. R. Hughes and C. C. Childers, individually and as members of the Corporation Commission of the State of Oklahoma, and the defendants Louis R. Morris and J. Berry King, from instituting any proceedings against this plaintiff under any of the penalty provisions of the above described oil conservation law, and further ordering the said J. Berry King to dissolve the restraining order in the receivership suit hereinabove described; a copy of said order is hereto attached marked Exhibit "K" and made a part hereof, and bond in accordance with said order is shown by Exhibit "L" hereto attached.

Plaintiff further alleges that a period of approximately one year will necessarily elapse from the 9th day of February, 1931, to the date of the determination of plaintiff's appeal from the order of February 9th, 1931, denying to it a temporary injunction as prayed for, and a much longer period of time from February 9th, 1931, to the date of the final determination of this cause will elapse; that during said time if plaintiff should comply with the provisions of the Act of the Oklahoma Legislature approved February 11th, 1915, and with the orders, rules and regulations of the Corporation Commission made and entered pursuant thereto as hereinbefore alleged and the act and/or the said orders, rules and regulations are finally determined to be void, it will have suffered great and irreparable injury by reason of its compliance therewith, and will have been deprived of its property and the use thereof without remedy against the State of Oklahoma or the Corporation Commission of Oklahoma or the defendants J. Berry King, Lewis R. Morris, Paul Walker, E. R. Hughes and C. C. [fol. 43] Childers; that the plaintiff has a constitutional right to test the constitutionality of said act and the valid-

ity of said orders, rules and regulations without restriction or hindrance; that if it adopts the alternative course of action, to-wit, to ignore said act and said orders, rules and regulations in assertion of its legal rights afforded to it by the Fourteenth Amendment to the Constitution of the United States, it must do so at the risk of incurring the burdensome and enormous penalties hereinbefore set out and will be constrained to forego its constitutional right to test the validity of said act and/or said orders, rules and regulations.

That the institution of proceedings either before the Corporation Commission under the provisions of section 3498 and section 3499, Compiled Oklahoma Statutes, 1921, or under the provisions of sections 8 and 9 of the Act of the Oklahoma legislature approved February 11th, 1915, or other proceedings will destroy plaintiff's financial credit and embarrass it in the operation of its business, to its great loss, and will otherwise work irreparable injury to the plaintiff; that the plaintiff has no adequate remedy at law, and is therefore entitled to relief in equity.

XXXV

That since the filing of the original bill in this cause plaintiff did on November 7th, 1930, file with the Corporation Commission of the State of Oklahoma its written special appearance and motion to vacate its rules, regulations and orders herein complained of, in which motion it stated that this suit was commenced in this court "about September 15th, 1930, for the purpose of restraining and enjoining the enforcement of said rules, regulations and orders herein complained of" and further set forth substantially all the facts and allegations herein contained, and prayed "the said proration order of October 28th, 1930, in cause No. 10326, and all other prior proration orders affecting this movent, be set aside and annulled at least in so far as movent is concerned; if this relief will not be granted then movent prays that the Commission enter an order suspend-
[fol. 44] ing the application of the penalty provisions of the statute during the pendency of its action in equity in the United States Court for the Western District of Oklahoma wherein it seeks to restrain and enjoin this Commission from enforcing said proration orders"; that said mo-

tion to vacate was set for hearing before the Commission on November 20th, 1930, at the offices of the Commission in the Capitol Building at Oklahoma City, Oklahoma; that on said date plaintiff appeared with its counsel and witnesses and those operators opposed to the motion appeared through their representatives and counsel, whereupon evidence was introduced and heard and on the morning of November 21st, 1930, the Commission denied plaintiff's said motion to vacate and entered an order denying plaintiff's motion to vacate and its motion to stay or suspend the enforcement of the orders, rules and regulations herein complained of pending a trial and final decision of this case in this court.

XXXVI

That the Corporation Commission of the State of Oklahoma is the only tribunal provided by the laws of said state endowed with final legislative authority on the subjects herein complained of; that the Oklahoma Supreme Court on appeal from said rules, regulations and orders herein complained of, has no authority to review said orders, rules and regulations and substitute therefor its own orders, rules and regulations, said court being confined exclusively to the determination of any and all judicial questions arising in respect to the validity and enforcement of said rules, regulations and orders; that plaintiff has no adequate remedy at law and is therefore entitled to relief in equity.

XXXVII

That on the 22nd day of April, 1931, the plaintiff filed in this court its petition for an allowance of an appeal to the Supreme Court of the United States from the order of February 9th, 1931, denying its application for a temporary injunction as prayed for, together with its assignments of error and bond on appeal, and that on that date the prayer for the allowance of an appeal was allowed, and [fol. 45] the bond on appeal approved; that said appeal has been duly perfected and is now duly lodged in the Supreme Court of the United States where the same is now pending for the decision of that court.

Wherefore plaintiff prays (1) that this court enter a temporary restraining order restraining the defendants

Hughes, Walker and Childers individually and in their official capacity from enforcing said orders, rules and regulations herein complained of, and that a temporary injunction be granted by a three-judge court as provided by section 266 of the Federal Judicial Code; (2) that said Oil Conservation Act be declared unconstitutional and void; (3) that if the relief prayed for in the second paragraph of this prayer cannot be granted, then that this court adjudge the rules, regulations and orders of the Commission herein complained of unconstitutional and void; (4) that the defendants, and each of them, and their successors in office, their agents, servants, employees and successors, and all persons acting under or through them, be temporarily and then permanently enjoined in any way or manner, by reason of the apparent force of said orders, from enforcing said purported orders, rules and regulations, or any part thereof, against this plaintiff, and enjoined temporarily and permanently from making, promulgating and enforcing any similar rules, regulations and orders; (5) that the statutes of Oklahoma prescribing the penalties for the violation of the rules, regulations and orders of the Corporation Commission and the Conservation Act be adjudged unconstitutional in that they deprive the plaintiff of due process of law, and that the defendants be temporarily and permanently enjoined from imposing upon this plaintiff any of the statutory penalties for the violation of said orders, rules and regulations; that the Corporation Commission and the defendants Paul Walker, E. R. Hughes and C. C. Childers and all persons acting by, through or under them, be temporarily and permanently enjoined from instituting proceedings against this plaintiff under the provisions of sections 3498 and 3499, Compiled Oklahoma Statutes, 1921, and from causing proceedings to be instituted against this plaintiff under the provisions of sections 8 and 9 of the Act approved February 11th, 1915, [fol. 46] and from causing any other proceedings criminal in their nature to be instituted against the plaintiff, its agents, servants and employees, in connection with the filing of reports as to the amount of oil produced in the Oklahoma City field since the 9th day of February, 1931, and that pending the hearing upon the application for a temporary injunction a temporary restraining order be forthwith issued restraining said defendants from proceeding

under said sections 3498 and 3499, Compiled Oklahoma Statutes, 1921, or causing any other proceeding to be instituted on account of alleged violations of the Act of the Oklahoma legislature approved February 11th, 1915, and the orders, rules and regulations made in pursuance thereto; that the defendant J. Berry King and the defendant Lewis R. Morris, and all persons acting by, through or under them or either of them, be temporarily and permanently enjoined from instituting proceedings against this plaintiff pursuant to section 8 of the Act of the Oklahoma Legislature approved February 11th, 1915, and from instituting receivership proceedings under the provisions of section 9 of that act, and from instituting any proceedings criminal in their nature against the plaintiff, its agents, servants and employees in connection with the filing of reports as to the amount of oil produced in the Oklahoma City field since the 9th day of February, 1931, and that pending the hearing upon the application for a temporary injunction they and each of them be forthwith temporarily restrained from instituting any of such proceedings; that the defendant J. Berry King be temporarily and permanently enjoined from prosecuting the application for a receivership in the cause entitled State of Oklahoma, ex rel. J. Berry King, Attorney General; v. Champlin Refining Company, now pending in the District Court in and for Oklahoma County, being cause number — of the causes pending in said court, and from prosecuting all incidental proceedings connected therewith, and that he be ordered to dissolve the temporary injunction heretofore issued in said cause against this plaintiff, [fol. 47] the Champlin Refining Company; (6) that plaintiff have all such other, further and general relief as it may be entitled to under the premises and the facts.

Horace G. McKeever, Harry O. Glasser, Edgar A. deMeules, Geo. S. Ramsey, Attorneys for Plaintiff. McKeever, Elam & Stewart, Ramsey, de Meules, Martin & Logan, of Counsel.

Duly sworn to by H. H. Champlin. Jurat omitted in printing.

Exhibits not here reprinted, being included in their entirety in the Volume of Exhibits.

[File endorsement omitted.]

[fol. 48] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF DEFENDANTS TO THIRD AMENDED AND SUPPLEMENTAL BILL OF COMPLAINT—Filed July 3, 1931

Come now the defendants and for their answer to the plaintiff's third amended and supplemental bill of complaint, hereinafter referred to as "bill of complaint", allege and state:

1. The defendants admit the allegations of paragraphs numbered I, II, III, IV and V of said bill of complaint.

2. Defendants admit that plaintiff is the owner and holder of oil and gas leases on the lands particularly described in paragraph VI of said bill of complaint, but deny that plaintiff has owned or held said leases at all times mentioned in said bill, and allege that plaintiff did not acquire its said leases or the several tracts or parcels of land described in said paragraph VI which are located in the Oklahoma City field until long after said field was discovered in December, 1928, and that it acquired its first lease therein in the Spring of the year 1930, [fol. 49] at a time when, and long after said field was placed under proration by the orders of the defendant Corporation Commission, which proration originated in October, 1929. They admit that plaintiff has drilled wells on said tracts of land as alleged in paragraphs VI and VII of said bill, but are without knowledge that said wells are of the potential capacities alleged by plaintiff.

3. Defendants allege that the described lots located in the Oklahoma City field in Oklahoma County covered by leases belonging to plaintiff, are in several separate small lots or tracts or parcels of land and that Lots 30 to 35 inclusive, in Block 2, Roosevelt Place Addition to Oklahoma City, upon which one of plaintiff's large wells is located, constitute one tract of land, and contain .48 of one acre of land; that lots 50 to 51 in said Block 2 constitute another separate tract of land containing .16 of one acre of land; and that Lots 23 to 26, inclusive, in Block 9, Armourdale Addition to Oklahoma City, upon which another of plaintiff's Oklahoma City field wells is

located, constitute a third and separate tract of land containing .31 of an acre of land; and they state that said three tracts of land and the other nine tracts covered by plaintiff's Oklahoma City field leases are not contiguous and that they are surrounded by other lands upon which companies and individuals other than plaintiff have and own oil and gas leases and upon which said other companies and individuals have and own oil and gas wells producing from the same common source of supply from which plaintiff's wells are producing. They allege that in said field producing wells of large capacities, drilled into [fol. 50] the producing horizon in which plaintiff's wells in said field obtain production, have been drilled by others owning leases on land surrounding and in the general vicinity of the lands leased to plaintiff.

4. Defendants further allege that the present developed area in the Oklahoma City field comprises about 8,000 acres of land and that there have been drilled therein approximately 800 wells, productive of oil in large quantities; that a comparatively small portion of said field, on the north and northwest, wherein plaintiff's said wells are located, called the "Town Lot" portion thereof, covers several laid out and platted additions to Oklahoma City, some within and other- adjoining the southeastern corporate limits of said city, but that by far the greater portion of said field lies south and southeast of said "Town Lot" portion of said field, extending a distance of several miles; and that the wells drilled in that portion of said field, other than the "town lot" portion thereof, are located, generally speaking, and as is customary, one well to each ten acres of land, but that within said corporate limits and said additions, wells are usually located and drilled on less than ten acre tracts; and that the wells on the lands surrounding plaintiff's leased lands are as a rule drilled upon larger tracts of land than the tracts covered by plaintiff's said drilled leased acreage. They allege that if the plaintiff be not limited as provided by the Oil Conservation Act of Oklahoma in the operation of its wells, it will be able to and will under the circumstances, extract far more than its fair share of said oil [fol. 51] and waste and dissipate excessive quantities of gas energy and cause great underground waste of oil, and

the injury to many other producers in said field will be far greater than the injury, if any will at all accrue, to the plaintiff if required to obey said Act, and the policy of the State of Oklahoma to conserve its oil and gas resources will be defeated.

Defendants further allege that the discovery well in the Oklahoma City field was completed in December, 1928, and that said field thereafter very rapidly developed by the completion from time to time of additional wells therein, and that said field was first placed under proration by an order of the defendant corporation Commission, effective October 15, 1929, and that said field has been operated under proration orders of the Commission ever since said date, and they allege that the plaintiff acquired its said leases in said field after October 15, 1929, with a knowledge of the fact that the potential production of said field greatly exceeded the reasonable market demands for production from said field and that if waste therein was to be prevented and ratable taking enforced, proration orders of the defendant Commission would necessarily have to be made and enforced; and that plaintiff drilled its first two wells in said field in the Summer and Fall of 1930 with a full knowledge of the then existence of proration orders issued by said Commission affecting all the wells then in said field and such as should be later drilled therein. They further allege that plaintiff built its pipe line, alleged in its bill of complaint to have been constructed, whereby it has a pipe line connection between its wells in said field and its refinery at Enid, Oklahoma, after the completion of its first producing [fol. 52] well in said field *and its refinery at Enid, Oklahoma, after the completion of its first producing well in said field*, and completed said pipe line on or about September 10, 1930, and did so with a full knowledge of the existence of said proration orders then outstanding affecting said field, and that if plaintiff complied with said orders it would be allowed to produce only its ratable share of the allowable production in said field as determined from time to time by said Commission. They allege that plaintiff made no protest to the defendant Commission or any of the defendant Commissioners against the existence, validity, or any of the terms of said orders, prior to the filing by plaintiff of this suit on September 15, 1930, which was shortly after the completion of said pipe line. They further allege that at

the time of the making of the Commission's order of October 28, 1930, pleaded by the plaintiff, the potential capacity of the plaintiff's then existing two wells in said field was approximately 10,400 barrels per day, and that at the same time the total potential capacity of all producing wells in said field was approximately 2,800,000 barrels per day, and that at said time the reasonable market demand for crude oil in said field was for 131,095 barrels per day.

5. They allege that plaintiff's oil and gas leases on the lands described in paragraph VI of said bill which are located in Seminole County, Oklahoma, were acquired by plaintiff after the passage and approval of the Oklahoma Oil Conservation Act attacked by plaintiff. They allege that the said lands held under lease by plaintiff in Seminole County are in two separate tracts, and held by plaintiff under separate oil and gas leases; that one of said tracts of [fol. 53] land, namely, the E. 2 of the S. E. 4 of the N. E. 4 of Section 14, Township 7 North, Range 6 East, Seminole County, Oklahoma, contains 20 acres of land, more or less; that same is located in what is known as the "Little River" oil field being a part of the so-called "Greater Seminole" oil field; that three of the nine wells alleged by plaintiff to have been drilled on said leases in the Greater Seminole field were drilled on said 20 acres of land, its well No. 3 thereon being a twin well to its Well No. 2 thereon, and said Well No. 3 was drilled and completed into a producing horizon above the depth at which Wells No. 1 and 2 were completed, being one well in the center of one ten acre tract and two in the center of the other ten acre tract; that said Little River oil field covers about six and one-half sections of land and that approximately 375 producing oil wells have been drilled therein, including plaintiff's said three wells, and that plaintiff's wells are located in about the center of said field, and that seven other companies own each a separate lease adjoining or cornering the land covered by plaintiff's said lease, and that there are ten wells, each well in the center of a ten acre tract, offsetting the same either directly or diagonally, so that said twenty acres of land is completely surrounded by other producing wells belonging to the other companies, and that in said field as a whole the wells are located, generally speaking, one well to each ten acres of land.

They further allege that the other tract of land, namely, the S. 2 of the S. W. 4 of Section 9, Township 6 North, Range 6 East, Seminole County, Oklahoma, on which there is an oil and gas lease owned by plaintiff to the extent of an [fol. 54] undivided one-half interest, is located in what is known as the "Konawa" pool, which compromises a part of the so-called "Greater Seminole" oil field; that the 80 acres of land covered by the said lease is located in the north end of said pool, and that six of the nine wells alleged by plaintiff in its bill of complaint to have been drilled on its leases in the Greater Seminole field have been drilled on said eighty acres of land, there being one well to each ten acres of said land, except the east twenty acres thereof on which twenty acres no well has been drilled; that said Konawa pool covers approximately two and one-half sections of land and wells have been drilled (on ten-acre locations) offsetting the plaintiff's said six wells to the north, northwest, west, southwest and south, so that said land is surrounded on all sides, except the east, by producing oil wells belonging to other companies.

6. Defendants are without knowledge that the plaintiff owns oil and gas leases on approximately 600 acres of land surrounding its well in Garfield County, Oklahoma. They deny that there are no correlative leasehold owners of oil and gas rights in the pool where said well is located and from which it obtains its production and that there are no neighboring oil and gas leases whose lands are being drained by said well, and aver that oil and gas leases are held by other operators around plaintiff's described holdings in said county and that other wells are being drilled on such surrounding acreage in search for oil from the same producing formation from which said well of the plaintiff is producing, and they further aver that plaintiff's said producing well came into production on or about May 29, 1930.

[fol. 55] 7. Defendants allege that the plaintiff never at any time prior to September 15, 1930, when it filed this suit, sought any relief against the issuance or enforcement of the proration orders of said Commission which had theretofore been issued, beginning with the order of August 9, 1927, although many of said prior orders affected its then existing production in Seminole County in the Greater

Seminole Area, and did not seek any such relief until the filing of this suit after the completion of its first well on its extremely small town lot lease, its .48 acre lease, in the Oklahoma City field, and the completion of its pipe line into said field when its situation became for the first time one where, if it could prevent the enforcement of the Conservation Act of Oklahoma and the said proration orders then in force affecting said Oklahoma City field, it could and would gain an unfair and inequitable advantage over other producers whose wells are upon larger tracts of land in said field than plaintiff's and who have no outlet *for* their own for their oil but must depend upon the common purchasers of oil for an outlet; and they say that, by reason of these circumstances, the plaintiff is guilty of laches and that plaintiff acquiesced in the enforcement of said law prior to the time when it could gain a decided advantage over its neighbors by striking it down, does not come into this court with clean hands, and now seeks the aid of this court to gain an unconscionable advantage over others.

8. They admit that the Oklahoma Legislature passed the laws pleaded by plaintiff.

9. They admit the making and entry by the defendant Corporation Commission of the State of Oklahoma, and acting as such Commission, of the various proration orders, in- [fol. 56] cluding the findings of fact and the decretal parts thereof, pleaded by plaintiff, copies of which are attached to said bill of complaint. They deny that the findings of fact in paragraph "F" of the Commission's order of June 30, 1930, No. 5189—was without any evidence before said Commission; and deny that said orders or any thereof was made without evidence. They allege that in addition to the orders pleaded by plaintiff, the said Corporation Commission made and entered an order on December 30, 1930, No. 5413, in Corporation Commission Cause No. 10326, a copy of which is attached hereto, marked Exhibit "A" and made a part hereof, the effect of which was to extend and continue the force, effect and operation of the Commission's order, rules and regulations issued October 28, 1930, by Order No. 5369 in Cause No. 10146, for the months of January, February and March, 1931, except as modified by the said order of December 30, 1930, No. 5413, and to regulate the production of oil and the operation of wells of all

producers of oil in the various oil fields of the State of Oklahoma, including the Oklahoma City field and the Greater Seminole field, as is shown by the terms and provisions of said order, and to prescribe rules and regulations for carrying into effect said order as is shown therein. They allege that on April 20, 1931, said Commission made and entered its order No. 5468 in said cause No. 10326, relating to the Oklahoma City field, a true copy of which is hereto attached, marked Exhibit "B" and made a part hereof, and that therein and thereby said Commission continued in force and effect all existing orders relating to the production of crude oil and natural gas in the Oklahoma City field as modified by subsequent orders and except as modified in said Order No. 5468, and increased the allowable produc-
[fol. 57] tion in said field to 7% of the potential production between seven o'clock A. M. April 20, 1931 and seven o'clock A. M. May 1, 1931, and fixing the allowable production at 6% of said potential for the period between seven o'clock A. M. May 1, 1931 and seven o'clock A. M. June 1, 1931, as shown upon the face of said order. They allege that on April 21, 1931, the said Commission made and entered its order No. 5470 in Cause No. 10326, a copy of which is hereto attached, marked Exhibit "C" and made a part hereof, wherein and whereby said Commission modified its order of October 28, 1930, No. 5369, insofar as the same related to Class "A" wells from ten barrels per day to twenty barrels per day, and ordered the production in excess of twenty barrels per day to be prorated upon a 50% basis; and placed the Konawa pool in Class "C"; the extension of East Earlsboro pool in Class "C", and the East Earlsboro pool in Class "B" in the classification of pools as set forth in the said order of October 28, 1930; and except as so modified, continued in force and effect its said order No. 5413, and an Order numbered 5369 which had been entered in said case. That on May 29, 1931, the said Commission made and entered its Order No. 5486 in said cause No. 10326, a true copy of which is hereto attached, marked Exhibit "D" and made a part hereof, whereby, among other things, said Commission fixed the percentage of allowable production in the Oklahoma City pool in cases of wells then not over produced at 6% of their potential production for the period from June 1, 1931, to July 1, 1931, and until the further order of the Commission.

They allege that said orders of the defendant Corporation Commission in each case continued in full force and ef- [fol. 58] fect its existing orders relating to the production of crude oil and natural gas in the State of Oklahoma, and the several fields thereof, except as modified by subsequent orders, and fixed from time to time the permissible percentage of production from each of the several oil pools and fields and classes of pools, as is shown upon the faces of said orders, and that the said orders as modified by other and subsequent orders herein admitted to have been entered or herein pleaded, are at this time in full force and effect.

10. Defendants allege that before any of the said orders were made, a petition was filed, in each instance, with the defendant Corporation Commission in which facts and circumstances were set forth which, if true, made it the duty of the said Commission and members thereof to proceed in accordance with the provisions of said Oil Conservation Act to conduct a hearing and determine whether or not orders, rules and regulations should be made and prescribed for the enforcement of the provisions of said Act, and praying for the making and entry of orders, rules and regulations accordingly; that said petitions respectively were duly set down for hearing at a time certain, and at the office of the said Commission in the Capitol Building at Oklahoma City, Oklahoma, and that in each case the said Commission issued a notice to all persons and classes interested, advising of the time and place of the hearing, and caused same to be published in a newspaper of general circulation in said state, and in addition thereto, issued and caused to be duly served a notice in writing to all persons, firms and corporations, including the plaintiff herein, known to the Commission to have any interest in said proceeding; and that [fol. 59] in each such instance, the Commission, at the time and place fixed, conducted an open public hearing on the said petition at which many persons interested in said matter personally appeared, and that the Commission then and there received and heard evidence fully establishing, in each instance, the necessity for the orders sought, and expressly offered to all persons an opportunity to be heard, and that at the conclusion of the hearing in each case, said Commission made and entered its findings of fact and its orders, rules and regulations as contained and set forth in the said several orders, as shown by the copies thereof attached to

plaintiff's bill of complaint, and the additional orders exhibited hereto.

11. They allege that the curtailment from time to time of the production of oil in each of the oil fields and pools affected by the said orders respectively and by the rules and regulations therein set forth, was to an amount of oil which, from the evidence before the Commission, conformed to the reasonable market demand for crude oil in said fields or pools respectively, and further allege that at the respective times of making and entering the said orders respectively, the potential production of the wells in the said fields respectively, greatly exceeded the reasonable market demand for crude oil in said fields respectively, as was found by the said Commission at the time of making and entering the said orders, and that such excess of potential production over reasonable market demand continued throughout the period of time that the said orders continued in force, and that there is at this time a very large excess of potential production in said fields over and above the reasonable [fol. 60] market demand for oil in said fields, and they state that it was necessary that the said orders be made and entered in order to prevent these wastes of crude oil in said fields which are defined and prohibited by the said Oil Conservation Act. They allege that the amount of the potential production of each of the pools placed under proration in and by the said orders respectively, was found by the said Commission, and was at the dates, respectively, of said orders, the amounts, respectively, stated in the said orders in the case of each such pool and that the amount of the then existing reasonable market demand for crude oil in each of said pools, respectively, is stated and set forth in said orders.

They allege that the Oklahoma City field has been in a condition of constant development and expansion, ever since it was opened up in December, 1928, and additional wells are at this time being drilled therein; that the wells are of the unusual depth of over 6,000 feet, the area of prolific production is unusually large, the wells have ranged in initial potential capacity from 2,500 to 90,000 barrels per day, that some of the largest wells have been completed during recent months, and that the gas pressure in the producing formations are the highest encountered in any field

in the State, being, usually, initially in excess of 2,000 pounds to the square inch. They further state that said field is the youngest field of consequence in the State, and came into production at a time of overproduction of oil elsewhere in the State and in the nation, and at a time when the common purchasers of oil had no desire to purchase from new fields, with the result that at least as early as the Fall of 1929, by which time a number of wells of large capacity had been completed in said field, the reasonable market demand for oil in said field has been far below the potential capacity of its wells; that in its order of October 28, 1930, the Commission found that the potential of said [fol. 61] field had increased to 2,800,000 barrels per day, and additionally, it made the following findings of fact, namely:

"The Commission finds that the full potential production from the Oklahoma City pool cannot be produced without waste, including physical waste and waste incident to the production of crude oil or petroleum in excess of the reasonable market demand, and that the reasonable market demand from said pool at the present time is approximately 131,095 barrels per day, and that in the month of November said reasonable market demand from said pool will be approximately 134,589 barrels per day, and that in the month of December the reasonable market demand from said pool will be 131,003 barrels per day, and that the market demand herein named is somewhat contingent upon transference by the purchasing companies of purchasing power from the 'Class A' pools herein to the Oklahoma City pool and upon ability to transfer pipeline connections, and the Commission therefore finds that the orders, rules and regulations should be made sufficiently flexible so that increases or decreases in market demand from said Oklahoma City pool and increases or decreases in potential production therefrom, can be recognized by ancillary orders of the Commission, and that for this purpose the Umpire and Operators' Committee should be instructed to compute from time to time, the rate of curtailment necessary in order to conform the permitted to the reasonable market demand from the said Oklahoma City pool and to report the same to the Commission with the facts in support thereof as a basis for such ancillary order; it being understood, however, that whatever reasonable market demand develops for

crude oil from the Oklahoma City pool shall be prorated among all the producing wells therein, so that each well will be permitted to produce its proportionate share of the amount of oil that may be produced from said field without waste."

In said order of October 28, 1930, from the evidence before it, the Commission further found as facts the following, to-wit:

"The Commission finds from the evidence that crude oil and natural gas occur together, or in close proximity to each other in the ground, and that there is a common gas pressure throughout a common pool which exerts an energy or force to move the gas and oil toward the point of least resistance, and, therefore when wells are drilled into a pool [fol. 62] or structure the oil and gas become migratory, and, having the power of self transmission, will move from one property to another, underground, in such pool; and that when some of the wells in such a common pool are permitted to produce at greater proportion of their capacity than others, drainage occurs from the less active to the more active wells, if such disproportionate condition is continued; that in the Oklahoma City pool there is a heavy gas pressure which would cause such drainage should disproportionate taking of crude oil and gas be permitted; that the history of the oil producing business in this and other surrounding states shows that in the case of flush pools where proportional taking from the wells is not enforced, and where the full production from the pool cannot be taken, either because of inadequate transportation facilities or because the reasonable market demand does not equal the potential production, producers who do not have physical or market outlets will be forced to produce their wells to capacity in order to prevent drainage of the oil to the wells of such producers as do have adequate physical or market outlets. In such cases, in the absence of adequate steel storage available to every producer, some of them will flow the oil into earthen pits. This has occurred many times in the oil pools in Oklahoma and surrounding states and has always caused actual physical waste of the crude oil through evaporation, leakage, and washouts to a very large extent. The Commission finds that this would be the case in the Oklahoma City field, and in many other fields of the state

if production were not curtailed as provided in this order.

"The Commission further finds that to permit the wells in the Oklahoma City field to flow wide open and continuously, without limitation as to time, would cause serious underground waste."

12. They further allege that although the plaintiff herein was a party to the proceedings before the said Commission in the case of each of the said orders, and had been duly notified of the hearings to be conducted, and had actual advance knowledge thereof, it made no objection and took no exception to the said orders at the time they were made nor afterwards (except as hereinafter stated), took no appeal therefrom or any thereof to the Oklahoma Supreme Court and did not and has never at any time sought to obtain any order of the Supreme Court of Oklahoma sus- [fol. 63] pending or superseding the enforcement of said orders or any thereof, and that, therefore, the plaintiff has waived its right to now question the validity of said orders or any thereof or any part thereof, either in this suit or otherwise; except that the plaintiff, through its president, H. H. Champlin, did appear at the hearing conducted upon the said application upon which the said order of October 28, 1930, was based, and he, the said H. H. Champlin, testified as a witness in opposition to the granting of any order based on the application for said order, and in his testimony stated substantially the same facts with reference to the ownership by plaintiff of oil wells and production and of a refinery and pipe line as are set forth in paragraphs V to X, both inclusive, of its said amended bill of complaint filed herein; but the plaintiff failed to except to the said order of October 28, 1930, when entered or afterwards, or to take any appeal therefrom, and made no objection to this Commission or the members thereof, other than in the testimony given by him, as aforesaid, and did not appeal therefrom to the Supreme Court of Oklahoma as it had the absolute right to do under the laws and Constitution of Oklahoma, and sought no suspension or supersedeas of said order or any part thereof at the hands of said Supreme Court, as under said Constitution and laws it had a right to do; and with the further exception that plaintiff did, on November 7, 1930, as alleged in paragraph XXXV of its bill of complaint, file with the

said Commission a written special appearance and motion to vacate the order of October 28, 1930, and the rules and regulations therein prescribed wherein it prayed for the vacation of said order and other prior proration orders affecting plaintiff at least insofar as plaintiff was concerned, and that in any event the Commission order a suspension as to plaintiff of the penalty provisions of the [fol. 64] statute during the pendence of this suit. They admit that plaintiff's said motion was set for hearing and was heard on November 20, 1930, and that it was denied on November 21, 1930, but they allege that plaintiff failed to take any appeal from the said action of the Commission on the said motion, and allege that the plaintiff has not attempted to avail itself of the remedies provided by the laws and Constitution of the State of Oklahoma to obtain any vacation or modification of the said order or any part thereof, or any suspension or supersedeas thereof.

13. Defendants admit that the defendant Commission did not curtail the production of crude oil in the smaller fields in said state in either its order of June 30, 1930, or that of August 30, 1930, and allege that this was for the reason, among others stated in said orders, that at said times said smaller fields and each of them had an adequate market outlet for the oil produced therein, so that the full production from each of said pools could be and was being produced and taken without waste. That in making said orders and the order of October 28, 1930, said Commission classified the various oil fields in the state on the basis of the existing relation between the potential production of each pool and the amount of the crude oil which could be produced therefrom without waste; and that because said relation was not the same in all the pools involved, the percentage of curtailment necessarily varied as between pools.

14. Defendants deny that the defendant Corporation Commission of Oklahoma, made, entered and promulgated said orders attached to said bill of complaint, or either of them, without having heard the testimony of any witness [fol. 65] under oath, and without having heard and considered any sort of legal or competent or adequate evi-

dence upon which to base said orders or either of them; and in this connection state and allege that said orders were made and entered after the hearing of testimony of witnesses under oath amply competent and adequate, and in fact overwhelming, to sustain and support the said orders and each of them. In this connection defendants further state and allege that the facts upon which said orders were predicated were so widely and generally known within the State of Oklahoma, that said Commission and the members thereof would have been justified in taking judicial notice thereof, and without evidence, made the orders which, upon evidence, they did make. They further state and allege that the remedy of the plaintiff for an attack upon the said orders or either of them, upon the ground that the Commission made and entered same without any legal evidence upon which to base the same, if it were true that there was no such evidence before the Commission, was by appeal to the Supreme Court of Oklahoma for review upon that ground and for reversal of the said orders upon that ground, and not by injunction as herein sought.

15. They admit that in the order of June 30, 1930, shown by Exhibit "A" attached to plaintiff's bill of complaint, Ray M. Collins was appointed by said Commission as its umpire and was authorized to employ assistants to aid him in administering said rules and regulations, and that said Ray M. Collins is now and for several years last past has been the umpire of the defendant, the Corporation Commission, purporting to act, and they allege that he has been so acting, as the agent and representative of said Commission, but they deny that said Collins is not now and never has been a legal agent of said Commission and that [fol. 66] he is not now and never has been an officer of the State of Oklahoma with authority to act in respect to the matters covered by the said act approved February 11, 1915, or the rules and regulations made thereunder by said Commission. They admit that in the order of October 28, 1930, No. 5369, the defendants again appointed Ray M. Collins as umpire and agent of the Commission to enforce the rules and regulations therein made, and authorized him to employ as many assistants as he should deem necessary, and in this connection they allege that the appointment as aforesaid, of said Collins as such umpire was made with

the consent of the Governor of the State of Oklahoma, as authorized by the provisions of Section 5 of the said Conservation Act. They deny that said Collins at any of said times was the paid employee and representative of numerous persons, firms and corporations producing oil in the various fields of Oklahoma, and engaged in the manufacture of refined products and marketing the same in competition with complainant. They admit that said Collins for his services in acting as said agent and umpire of the Commission, is now and has been receiving a monthly salary at the rate of $2000.00 per month, but deny (subject to the explanation hereinafter made) that he has been receiving the same from various firms, persons and corporations engaged in the production of crude oil in Oklahoma, and the refining of crude oil in competition with complainant, and admit that said Collins has never been paid nor promised by the State of Oklahoma or any political subdivision thereof, any compensation for his services as umpire and agent of said Commission, and in this connection they allege that the compensation paid to said Collins for his services as agent and umpire of said Commission as above admitted, has not been and is not being paid by any indi- [fol. 67] vidual or faction, but that the manner of its payment was and is as follows, to-wit: There being no public funds available out of which the said Commission could or can pay said compensation, said Collins has received his compensation out of a common fund created by proportional assessments voluntarily made by consent of practically all producers interested, and levied on practically all the oil producers interested in the oil fields in which said Collins has served and is serving. They admit that said Collins has at all times acted in conjunction with a so-called Operators' Committee, composed of various individuals producing oil in Oklahoma, and representatives of firms and corporations producing crude oil in Oklahoma fields, but are without knowledge that the firms or corporations with which they are associated are manufacturing the refined products from crude oil and marketing the same in competition with plaintiff, and they deny that said Collins has at all times or at any time acted in the service of said so called Operators' Committee and/or said representatives of firms or corporations. In this connection they allege that said Collins has acted solely in the service

of said Commission and that in each oil field placed under proration by the said orders, a so called Operators' Committee, composed of producers in said fields respectively, were selected and appointed by said Commission, and that such Operators' Committees were merely advisory committees, the members of which served without compensation. Said Commission issued its orders appointing said umpires and Operators' Committee as agents of the Commission to enforce said orders and the Governor of Oklahoma consented thereto in writing.

16. Defendants state that the orders of the Corporation Commission complained of are exceedingly difficult of enforcement, not because of any uncertainty in the rules and [fol. 68] regulations of the Corporation Commission to prevent waste, but because of the peculiarly technical and complex nature of the business of producing oil. That, accordingly, to enforce said regulations against waste, it became necessary to obtain and utilize the advise of practical oil men; that, accordingly, in addition to the services of said umpire, in respect of each district brought under restraint, under the orders of the Corporation Commission, an Operator's Committee, entirely familiar with the peculiar producing conditions of the particular pool was thought by the Commission and has been found to be helpful as an adviser to the Umpire in enforcing the prescribed and definite rules of proration laid down by the Corporation Commission. That it was because of these circumstances that an advisory committee of operators interested in each pool put under proration was provided for in the orders of the Corporation Commission complained of. And, although the function performed by them was to advise with the Umpire regarding the enforcement of the specific rules and regulations of the Corporation Commission, by virtue of their appointment by the Corporation Commission, consented to by the Governor, they became the agents of the Commission, within the terms of said Conservation Act. That the function of the umpire was to enforce the specific rules of the Corporation Commission complained of in plaintiff's bill involving vast detail and a technical and practical knowledge, so that each operator, including the plaintiff, in a particular pool brought under restraint should be subject to an equal and equitable restraint in comparison with that imposed upon

all the other operators in the pool. They allege that plaintiff has never at any time complained to the defendants or any of them that any member of any of the Operators' Committees was not fitted for his position or has acted unfairly or impartially; nor has plaintiff sought any change in the personnel of any of said committees.

[fol. 69] 17. They admit that the Commission's said Order No. 5189 made on June 30, 1930, contains the provisions copied in paragraph XIX of said bill, and that said Order No. 5369 made on October 28, 1930, contains the provision copied in said paragraph XXI of said bill; but said defendants state that said provision in the order of June 30, 1930, as quoted in said bill is preceded by the following language:

"Where precentage proration is applied a gauge of producing wells shall be taken by the Umpire or under his supervision in the following manner:"

and the provision in the order of October 28, 1930, is preceded by the following language:

"Where percentage proration is applied a gauge of *of* producing wells shall be taken in the following manner:"

and is followed by the following language:

"During the time this Order is in force a similar gauge of each property shall be taken from time to time as the Umpire and Operators' Committee may designate but not less than once each month, except that in the entire Greater Seminole area, aside from South Earlsboro, East Earlsboro, East Little River, Sasakwa, Konawa, West Asher-Wanette, Earlsboro Townsite and Wilcox wells in Allen pools, and in the 'Class A' pools, the gauge may, upon direction of the Umpire, be determined by applying the proper decline curve for each lease so guaged."

18. They deny that the oil wells in the Oklahoma City field have never been gauged by the said Commission or by any competent and legally qualified agent of said Commission or legal and qualified officer of the State of Oklahoma, and deny that the Commission's findings of the potential production in the Oklahoma City field set forth in the various orders, were not based upon any gauge of the wells in

said field, and that the Commission's findings of the potential production in the Seminole field and other fields set forth in said orders, were not based upon any gauge of the wells in the said fields respectively, and that no legal and lawful gauge as provided by the Oklahoma Statutes, has ever been made by said Commission or under any valid rules prescribed by it, and alleged that neither Section 7958, Compiled Oklahoma Statutes, 1921, nor any other provision of the law, requires that said wells be gauged by officers of the State of Oklahoma or agents employed or appointed by [fol. 70] said Commission, with the consent of the Governor, but only that they be gauged under rules and regulations to be prescribed by said Commission, and they state that rules and regulations for gauging all wells operated on a percentage basis were prescribed and incorporated in said orders, and that all wells so operated were gauged by or under the direction of the Umpire in accordance with said rules and regulations. They state that in practice there are two methods whereby the wells in a given field may be operated to accomplish the taking from his well or wells, by each producer, of only that proportionate part of all the oil that may be produced from such field without waste as the production of the well or wells of such producer bears to the total potential production of such field, one being the so-called "percentage basis" and the other the so-called "time basis". By the percentage basis of proration, each well owner, by the application of back pressure on each of his wells, while operating same continuously, restricts the flow of oil therefrom so that in the prescribed period of time it produces its proportionate part of the allowable production from the field; and by the time method the wells are grouped into classes and the owners of one group of wells operate their wells to full capacity for a fixed short period of time while all other wells in the field are shut in, then the wells of another class are so produced, and so on, with the result that each well is on full production for a fixed short time and is then entirely closed until its turn again so to produce is reached; and they state that the wells in all fields affected by said orders except the Oklahoma City field have at all times been operated on a percentage basis; and that prior to January 3, 1931, the Oklahoma City field was operated on a time basis, and that prior to said date the potential capacities of the wells in said Okla-

homa City field were determined by ascertainment by the umpire, from day to day as said wells were on production, of the amounts produced by said wells, respectively, when [fol. 71] on production from time to time; and since said date in the form and manner prescribed in orders No. 5414, 5437, and — pleaded by plaintiff.

19. They deny that various persons, firms and corporations owning and operating oil wells in the Oklahoma City field, the Greater Seminole field and some of the other fields, organized what is known and referred to in the Commission's rules, regulations and orders complained of by complainant as an "Operators' Committee" and state that the several Operators' Committees for the several prorated fields covered by said orders, were suggested by said Ray M. Collins, Umpire, approved at meetings of producers duly called, at which all the producers in said field respectively, were notified and given an opportunity to be present, and that their appointment by the said Commission (with the consent of the Governor) was an exercise of the independent judgment of said Commission.

They deny the import of the allegations of paragraph XXIII of plaintiff's bill of complaint relating to the appointment and function of an Operator's Committee, to the effect that there is one Operators' Committee for all the prorated fields, and allege that there is a separate Operators' Committee for each prorated area.

20. They deny that the Operators' Committee (for the Okalhoma City field) procured the Commission to name one of their employees, Otto B. Bradford, as the so-called umpire of for the Oklahoma City field, and state that said Bradford is not and has never been an employee of any member of said Committee, and allege that said Bradford was nominated as assistant umpire and assigned to said field by Umpire Ray M. Collins, and his employment and appointment were made by said Commission with the consent of [fol. 72] the Governor of said state. The- deny that said Bradford acts under the direction of the Operators' Committee for said Oklahoma City field, and allege that he acts under the direction of Ray M. Collins, umpire for the state as a whole, and said Commission. They admit that it was the business of said Bradford as said umpire, to see that the producers of oil in the Oklahoma City field keep their

wells closed down on said proration basis, but deny that it is his business to see that production is allowed in said field upon an unfounded and unwarranted estimation of the potential production of said field. In this connection they allege that by order of said Commission, entered originally in the Fall of 1929, at the request of all of the then producers in said field, and continued in force from time to time since then but not beyond January 3, 1931, at the request of a majority of the operators therein, and after a full hearing the Oklahoma City field was operated upon the time proration basis. They aver that the plaintiff never protested to defendants against said method of operating said field or complained to defendant that the potential production as ascertained by the Commission or the Umpire was not correct, and they allege that they are informed and believe and therefore allege that at a meeting of the Oklahoma City field producers held in the Fall of 1930, a vote was taken on a motion to recommend to the Commission that it order said field to be thereafter operated on a percentage basis, and that a duly authorized representative of plaintiff who was present and voted against making the change though a majority of the producers voted in favor thereof. They admit that Otto B. Bradford has never received nor been promised any compensation by the State or any authorized agent or political subdivision thereof, for his services as Umpire. They deny that said Bradford has been receiving compensation from said Operators' Committee for his services, and deny that all or any of his acts or deeds have been illegal and unauthorized by any valid rule and regulation of the Commission or by the provisions of any statute of said state, and they allege there being no [fol. 73] public funds available out of which the Corporation Commission could pay said Bradford for his services, he has received his compensation out of a common fund created by proportional assessments voluntarily made by consent of and paid by practically all producers in said Oklahoma City field.

21. Answering the allegations of paragraph XXIV of said bill of complaint, these defendants allege that the plan set forth in said orders for gauging the wells affected by said orders, is a practical and workable plan, designed to accomplish fair, true and equitable gauges of said wells, and same was and is authorized by the provisions of said

Conservation Act, and that the complainant has not at any time made objection before the defendant Corporation Commission that the said plan is not fair and practical, or that it does not accomplish a true and correct gauge of the wells, and has never sought any modification by said Commission of the said orders or any of them in this regard, and they deny that the said rules, regulations and orders of the Commission are each and all, or any of them, void, in that in not providing for notice of the taking of gauges of wells, except as provided in said orders, they deny the plaintiff due process of law or the equal protection of the laws guaranteed to plaintiff by the Fourteenth Amendment; and they further aver that the matter, method and manner of gauging said wells in order to determine the potential production thereof, is an administrative and ministerial function.

22. Answering the allegations of Paragraph XXV of said bill of complaint, defendants state that the reason no operator in the Oklahoma City field has stored crude oil in earthen tankage or permitted it to run at large on the surface of the earth (except in the case of a few wells, that, by reason of the extremely high pressure in the underground oil or gas reservoir, became uncontrollable and ran wild for several days) is because of the existence and en- [fol. 74] forcement of the proration orders herein complained of, and the orders which preceded them, and they aver if the said orders had not been made and plaintiff had been heretofore permitted to produce its wells to capacity or substantially to capacity, then plaintiff would have drained a large part of the oil from under the lands of the neighbors and additionally would have caused underground waste of oil, or, its neighbors, in an effort to protect themselves, would have produced and wasted immense quantities of their own oil in earthen storage and otherwise, evils which said law was designed to prevent.

23. Defendants state with reference to the sections of said Conservation Act which are involved herein, that is to say, all the sections thereof except Section 2, being 7955 C. O. S. 1921, (as to the validity of which excepted section the defendants make no allegation for that the Commission has not acted thereunder in the orders herein involved), that they are not invalid under the Fourteenth Amend-

ment to the Constitution of the United States for that oil and gas are irreplaceable natural resources of the State and while in the ground possess the power of self-transmission from place to place, and First, the Legislature of Oklahoma, acting under the police power, had and has authority to regulate and restrict the use and enjoyment by landowners within the said state of the natural resources of the state, including oil and gas, so as to protect said resources from waste; and, Second, said Legislature under the police power was possessed with authority to regulate and restrict the use and enjoyment by landowners within said state of the oil and gas in and under their lands so as to prevent the infringement by any of such landowners of the rights of others to extract and reduce to possession their respective fair and equitable proportionate parts of the oil and gas in the reservoirs beneath the lands of all; and, Third, said Legislature possessed the power to reach the end of so protecting the said rights of the several land [fol. 75] owners in a common source of supply of oil and gas by legislation designated to prevent waste.

Defendants aver that in the enactment of said Act approved February 11, 1915, the Legislature of Oklahoma was dealing not only with a natural irreplaceable resource, but also with a peculiar species of property of vast importance and consequence to the State of Oklahoma as a proprietor and to the economic welfare of the people of said state. Defendants aver that oil and gas underground possess characteristics not shared by other species of property. That the typical oil reservoir in the State of Oklahoma and in the other American states, including the Oklahoma City oil pool, the greater Seminole oil area and the other fields in respect of which complainant complains, is characterized by the following conditions: (1) Oil and gas exist in the ground in sedimentary rocks, being a porous, sandy strata, or in lime formations varying in texture and porosity, and these are called oil pools. (2) They exist in their undisturbed state under pressure, often quite high. (3) In said pools both oil and natural gas will be encountered as the occupants of the same reservoir. (4) There will be a quantity of free gas inhabiting the higher portions of the saturated formation, such gas being almost entirely, if not completely disassociated from the oil content of said formation, but exerting a pressure throughout the same. (5) In

addition to said free gas large quantities of natural gas will be found in the reservoir dissolved in the oil contained therein which association between the oil and gas reduces the viscosity of the oil and otherwise tends to increase its mobility so that when the reservoir is penetrated by a well the propensity of the oil to migrate to the opening thus created and to be lifted to the surface is vastly augmented, [fol. 76] and as a result of this physical condition oil may be drained from the lands of one oil operator through the well or wells of another operator penetrating the common reservoir. (6) Furthermore, upon the penetration of the reservoir by a well the free gas at the top of the structure functions in such a way as to drain the oil originally inhabiting one tract of land to the tract penetrated by the well. (7) the free gas at the top of an oil structure and the gas dissolved in the oil therein constitute what in the oil industry is defined as the "gas energy" of the particular pool, and the gas energy of an oil pool is the chief agency in moving petroleum laterally to a well penetrating the reservoir, and also in lifting it to the surface for recovery for commercial purposes. (8) until such time as the pressure called "gas pressure" in the reservoir is dissipated through wells drilled into the reservoir, the oil and gas flow through the wells, when opened; thereafter the oil is usually extracted by pumping.

That the characteristics of oil and gas hereinbefore mentioned apply to all the oil properties described in plaintiff's bill, and the pools wherein they are situated. That these characteristics establish a community interest in the gas energy or pressure of an oil pool between and among all of the proprietors having rightful access to the particular reservoir, by reason of the fact that should one oil operator therein wastefully or inefficiently or disproportionately use said gas energy or pressure to produce his oil, such use to the extent of such waste or that it is improper, deprives the other oil operators in said pool of the right to recover the quantity of oil from their lands which they might recover if there were no such waste of gas energy or pressure or no inefficient or disproportionate use of the same. Accordingly by the nature of the subject matter dealt with correlative rights and obligations apply to an oil and gas pool. No operator therein may disproportionately use the gas pressure or energy of the pool so as to take from the

pool a disproportionate part of the oil content thereof, without at the time, and by so doing, seriously injuring the coequal right of other surface proprietors to use said energy and extract the oil, and at the same time produce under- [fol. 77] ground waste. As has been alleged, at the time of the making of the orders herein complained of, and at the time of the filing of this suit and at all times since then and now, the potential production of the Oklahoma City pool and each of the other pools where plaintiff's wells are located, greatly exceeded and exceeds the reasonable market demand for oil therein, as is shown on the face of said orders. The facts last alleged demonstrate that it is not possible to market all of the oil production from either of said areas. Complainant states that it is in position to take all of its production, both from the Oklahoma City pool and from the Greater Seminole area and the other fields where it has wells, but defendants aver that all of the oil operators therein are not only unable to market or otherwise utilize all of their production therefrom, but only a part thereof, and in the Oklahoma City pool a very small part thereof, and that if complainant shall be permitted to take all of its production from said pools, such action on its part would destroy the community nature of the gas energy in each of said pools, and in so doing, the complainant will be able to produce more than its proportionate share of the production from said pools to the destruction of the property rights of the other operators in said pools, and will cause waste; if the complainant shall be permitted to do one of the things designed to be prevented by the statute recited in complainant's bill, that is to say, instead of submitting to a proportional taking of oil from each of said pools, each operator thereby being permitted to produce such proportion of the market outlet of the pool as his potential production bears to the potential production of the pool, complainant would be permitted to produce all of its oil to the irreparable detriment of the other operators in each of said pools, by draining the oil from their properties and causing them to commit waste by flowing their oil into open earthen storage because of inedaquate market outlets for their oil. The said statute was designed to prevent both the evil of commission of waste and the evil of disproportionate taking on the part of several operators in a common pool when the full production therein cannot be had without

waste, and thus to prevent the consequences above enumerated growing out of permitting the complainant herein to produce without restraint the oil from its wells in the said pools where there is an inadequate market outlet.

[fol. 78] Defendants aver that the said Act was adopted by the Legislature of Oklahoma in order not only to prevent the waste in crude oil under ordinary circumstances, but also to prevent its waste incident to the production of crude oil in excess of transportation and marketing facilities or reasonable market demands, and defendants aver that as is above explained, actual waste of crude oil occurs as an incident to the production of crude oil in excess of transportation or marketing facilities or reasonable market demands, and that additionally, and as an incident to the prevention of waste under the said circumstances, said statute had as one of its purposes the protection of the coequal rights of the several land owners in a common source of supply of crude oil against the taking by anyone thereof of an unfair and disporportionate part of the oil content in such common source of supply. In this connection defendants allege that prior to the enactment of said statute and its approval on February 11, 1915, as at all times since its enactment, there were and have been three classes of oil operators in the State of Oklahoma, namely: First, the completely integrated unit which produced, transported, and refined petroleum and marketed the products thereof; Secondly, the quasi-integrated unit which produced, transported and marketed crude petroleum; thirdly, the non-integrated unit which engaged in the sole business of producing oil. Defendant aver that in the years 1905, 1906 and 1907, the Glen Pool in Oklahoma was under active exploitation, and that the three classes of oil operators held producing leases therein; that the integrated and quasi-integrated units produced all the oil that they could produce from their properties, and that a non-integrated oil operator owning production alone and having no actual market for all his output was totally unable to produce all his potential production from said pool. In consequence, by virtue of the nature of the substances involved, the integrated and quasi-integrated units in the oil producing business used more of the gas energy and pres-

[fol. 79] sure of the pool than they were entitled to; that an integrated or quasi integrated oil producer was able to take from his lease all the production therefrom when his neigh-

bor or neighbors, non-integrated producers, were not able to market any oil therefrom, or to market a production therefrom bearing any equitable relation to the quantity taken by said integrated or quasi-integrated producers. That the oil industry of the State of Oklahoma passed through the same experience in the Cushing field in Oklahoma between 1913 and 1915; and in the Healdton field the condition existed of an integrated or quasi integrated oil producer being able to produce and market all of his production from a particular oil pool, although at the time an adjacent operator or another operator in the same pool was not able to market any or at the most an inappreciable quantity of the production of his wells. As a result, the integrated or quasi-integrated operators of the state were utilizing a community property, namely, the gas pressure energy of the pools in which they were interested, to the fullest possible extent and to the overwhelming detriment of the non-integrated operators in the pool, who, by reason of the action of the integrated producer, were compelled to either submit to drainage or run their oil into earthen storage where it evaporated and wasted. And defendants aver that to meet this evil and to establish equality of production during periods of oversupply, and otherwise to prevent waste, the Act effective February 11, 1915 was enacted.

Defendants aver that petroleum is an irrenewable and irreplaceable natural resource, and that when the oil resources of the State of Oklahoma are exhausted, they cannot be replenished by any human agency. Defendants aver that notwithstanding a condition of acute overproduction in the American petroleum industry at the time of the enactment of said Conservation Statute, the discovery of new petroleum resources was entirely a fortuitous circumstance; that new petroleum supplies in the state might or might not be discovered, and that the science of finding oil had not yet so advanced as to determine whether there would be an over or [fol. 80] under-supply of petroleum. That in consequence of the irreplaceable character of petroleum it was within the province of the state to safeguard the supply therein so as to continue as long as possible the economic prosperity of the state as a producer of petroleum. That, in addition, the petroleum industry at that time was the second among the productive enterprises of the state, not only in the value of its products, but in the employment of men engaged in said

business. That, accordingly, the predicament of the petroleum industry in said state entered largely into the general welfare and prosperity of the citizens of said state, not only through the direct employment of thousands of employees, but by their contribution to the general welfare and prosperity of the state. That, in addition, the State of Oklahoma itself owned vast tracts of land which were favorable for the production of petroleum which would add to the revenues of the state and therefore contribute to the general welfare of the citizens thereof. That it was by reason of these things, community nature of the gas pressure or energy of an oil pool, the general welfare of the people of the State of Oklahoma, and the situation of the state in its proprietary capacity, that the Act effective February 11, 1915 was enacted. During periods of overproduction in the petroleum industry of said state, that Act denies to any oil operator in a pool where the market outlet does not equal the full production, the right to take all of the oil production from his properties that they are capable of producing, and yields to them the right to produce from their properties the same proportion of their production that the other operators in the particular pool may produce in meeting the total reasonable market demand. Defendants aver that said statute provides for proportional taking, and was designed to enforce proportional taking because of the community interest in the gas energy or pressure of an oil pool, and because of the general public welfare in respect of an irrenewable and irreplaceable natural resource of vast con- [fol. 81] sequence to the economic future of the state.

The complainant asserts privileges which said statute was directly designed to prevent, and which, under its police power, the state has the right to prevent. The complainant is an integrated oil producer; owns its production; owns transportation facilities from its production to its refinery; owns its refinery, and distributes and sells its own refinery products. If the complainant shall be entitled to produce all of its production in the Greater Seminole area and the said other pools, it shall obtain a disporportionate part of the gas energy which is the chief agency in the production of oil and of the oil; to the serious detriment of the other producers in said pool who are in position only to market a part of their production. The complainant by its bill seeks to deprive the other oil

operators in said fields of their just share of the gas energy and oil, which between the complainant and the other operators in said pools are subjects of common property interest. Accordingly, complainant's bill, instead of having as its object the protection of a property right, has as its object the invasion of the property rights of the other owners of oil properties in said pools. Accordingly, defendants deny that the orders of defendants described by complainants are void and unenforceable for the reason that the execution of the same is in violation of the complainant's constitutional rights under the due process of any other clause of the Constitution, either State or Federal.

24. Answering the allegations of paragraph XXVI of said bill, defendants deny that the rules, regulations and orders complained of are arbitrary and discriminatory in any respect alleged by plaintiff; they allege that under said order of October 28, 1930, no wells within the state are allowed to produce 100% capacity save only when the wells on any single lease average in daily production five barrels or less; that this exemption was later changed to [fol. 82] 10 barrels and still later to twenty barrels; and they further state that each oil field in said state is limited to the production of an amount of oil equal to the reasonable market demand for oil in such field, and each producer therein is restricted to the production of his proportionate amount of the oil allowed to be produced in said field, determined in the form and manner prescribed by said conservation act. They deny that plaintiff has been required and compelled by the defendants to entirely shut in its wells in the Oklahoma City field, but they allege that plaintiff has been only required to shut in its wells in said field, at some times in conformity to the time proration plan in force before January 3, 1931, which was set up for proportional production by each and every operator in said field. They are without knowledge that plaintiff can produce oil from its wells for a less cost than the price it is now and will be compelled to pay for crude oil from other producers on the open market, but say that, if it can do so the fact is immaterial. They deny that said rules, regulations and orders, even if it be true that plaintiff is compelled to purchase oil from others and

to do so at a loss over what it would be able to do if it produced and refined its own oil,—deny to plaintiff due process of law and the protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States; and in this connection state that plaintiff is subject to reasonable police regulations, such as is prescribed by the said conservation act and the said orders of the Commission made pursuant thereto, whether or not in obeying same plaintiff may suffer some loss which it would not otherwise be subjected to. They are without knowledge that under present conditions and conditions existing for several months prior hereto plaintiff has been compelled to run its refinery at a loss, and are without knowledge that if plaintiff were allowed to produce and refine its own production in Oklahoma without restriction, it could run its refinery at a profit or at least without a loss, and say that if those things be true they are immaterial facts. They deny that said rules, regulations and orders have the effect of confiscating the property of the [fol. 83] plaintiff and that they are for that reason unconstitutional and void; and they deny that they are in contravention of Section 2 or Article 2 of the Constitution of Oklahoma, copied in paragraph XXVI of said bill, for the reason there stated or any other reason; and in this connection state that the Oklahoma Supreme Court, in the C. C. Julian Oil & Royalties Company case, held that they are not in contravention of said provisions of the Oklahoma Constitution.

25. They deny the allegations of paragraph XXVII of said bill relating to the provision of said orders dealing with purchasers and carriers of oil.

26. They deny that many large oil corporations, firms and individuals selfishly interested in maintaining high prices for crude oil, or otherwise influenced, formed by an agreement among themselves what is known as an "Operators' Committee", in the rules and regulations of said Commission, and that said corporations, firms and individuals, or any thereof, through Ray M. Collins, or otherwise, formulated the so-called proration orders herein complained of, and in this connection state that the said

orders are the independent acts and represent the good faith judgments of the said Corporation Commission. They deny that said oil companies, or any of them, entered into an agreement, combination and confederation among themselves to limit the natural output in the oil fields in Oklahoma and the United States, and thereby restrict production for the purpose of controlling the price of crude oil and its refined products and eliminating thereby the plaintiff and others in plaintiff's class as competitors, and in this connection allege that said orders, rules and regulations were made and entered by said Commissioners and said Commission in good faith and as their own independent act and judgment in compliance with their duties and the obligations imposed upon them in and by said conservation act and in order to prevent the waste of crude oil and to protect the co-equal and correlative rights of the several producers and owners of oil wells in the several fields covered and affected by said [fol. 84] orders; and they deny that the said orders are a violation of Section 8 of Article 1 of the Constitution of the United States.

27. With reference to the allegations of paragraph XXIX of said bill, relating to the suit of C. C. Julian Oil & Royalties Company against the defendants herein, and the decision of the Supreme Court of Oklahoma in said case, the defendants allege that in its opinion and decision in said case the Supreme Court of Oklahoma denied the contention of the plaintiff in said suit that the said conservation act and the then existing and effective orders of the defendant Corporation Commission were invalid as being in violation of the provisions of the due process clause of the Federal Constitution and the similar clause of the Oklahoma Constitution and the other clauses of the Oklahoma Constitution which the plaintiff in this section alleges they violate; and further allege that plaintiff appeared in said C. C. Julian Oil & Royalty Company case and filed therein its brief amicus curiæ, and thereby the decision of the said Supreme Court of Oklahoma became binding and conclusive upon the plaintiff herein, and they plead that by reason thereof the plaintiff herein is estopped to now question the validity or constitutionality of the said conservation act and/or the said orders of the Corporation Commission.

28. Answering the allegations of paragraph XXX of said bill, defendants deny that the said Oil Conservation Act and the separate sections thereof (other than section 2 thereof, as to which these defendants make neither allegation nor contention inasmuch as they have not in any of the orders here involved attempted to act under Section 2), are unconstitutional and void for any of the reasons stated in said paragraph.

29. Answering the allegations of paragraph XXXI of said bill, defendants deny that said conservation act is void in that it violates Section 1, Article 4 of the Oklahoma Constitution.

[fol. 85] 30. They deny that said Act is void in that it violates Section 1 of Article 5 of the Oklahoma Constitution, as alleged in paragraph XXXII of said bill.

31. They deny that said rules, regulations and orders are void in that they were made and are maintained with threats of their enforcement in excess of the defendant Commission's authority and powers, or in that they undertake to regulate, control and unreasonably hamper plaintiff's business of refining oil and marketing the products therefrom.

32. Answering paragraph XXXIV of plaintiff's bill, defendants deny that the defendants members of and as the Corporation Commission of the State of Oklahoma, are threatening to continue to make and enforce from time to time for an indefinite period its present rules, regulations and orders, thereby depriving plaintiff of its rights guaranteed by the Fourteenth Amendment to the Constitution of the United States or that the defendants intend to and will make said rules, regulations and orders for a brief period of time and then shortly before the expiration thereof continue them all for the purpose of preventing this plaintiff from presenting to this court and to the Supreme Court of the United States the issue of the validity of said rules, regulations and orders and their constitutionality and the constitutionality of the Oklahoma Oil Conservation Act, and that this course of conduct has been maintained by defendants from month to month from June 1930, and will hereafter be continued from month to month or for brief periods for the purpose of coercing this plaintiff and others similarly situated into an acceptance and acquies-

cence of their orders, rules and regulations and with the hope that this suit, or any other action commenced in the Federal Court, will become moot before a trial and decision can be had.

Defendants state that the Corporation Commission of the State of Oklahoma began establishing the present series of orders, rules and regulations to prevent waste of petro- [fol. 86] leum in the State of Oklahoma in the year 1927 under the provisions of said Conservation Act and admit that such rules and regulations were established for comparatively brief periods of time; that this was necessary because the type of waste considered by the Commission in each instance consisted of the production of petroleum in the State of Oklahoma in excess of the reasonable market demand, and waste incident thereto, although in the establishment of all such rules and regulations other types of waste incident to and caused by the production of oil in said state over the reasonable market demand were also considered and by the orders of the Corporation Commission all such types of waste prevented. Defendants state that continuously since then, as will always be the case, they were dealing with a peculiar subject matter; that the extent of the state's production of crude oil over a considerable period in the future could never be exactly determined, and that such determination could be made only for a brief period in the future; that at the same time the demand for crude petroleum in the state at large or in any particular pool could not be accurately determined for any considerable period in the future. In other words, defendants allege that both production and demand, was contemplated by the Conservation Act, had to be determined for brief periods of time; that as a rule said rules and regulations were established for a three months' period and even then with a regulation to the effect that production might be increased or decreased during the three months' period by supplemental order of the Corporation Commission after hearing, depending upon the extent of the reasonable market demand; that the orders complained of were made under the conditions hereinbefore alleged in pursuance of the Conservation Act and not for the purpose alleged by the plaintiff. Defendants further aver that whether or not they shall make any further orders of the character complained of by the plaintiff shall depend entirely upon the

character of the petition, if any, that may be filed for further regulations to prevent the waste of oil, and upon due proof of the allegations of such petition before, the Com- [fol. 87] mission after notice of a hearing therefor given in pursuance of said Conservation Act; or, if no such petition be filed, whether defendants find from conditions in the oil fields in the state that they should nevertheless conduct a hearing for such an order.

33. They admit that subsequent to February 9, 1931, during a period of approximately 100 days, the plaintiff produced approximately 300,000 barrels of crude oil from its wells located in the Oklahoma City pool in excess of the amount which it would have been entitled to produce from said area under the act of Oklahoma Legislature approved February 11, 1915, and the orders of the Corporation Commission referred to in said bill of complaint and in this answer, but deny that plaintiff produced said 300,000 barrels of excess oil or any part thereof in order to test the constitutionality of the penalties prescribed in said Act of the Oklahoma Legislature, or by reason of the fact that the refineries of the plaintiff were in imperative need of crude oil which could only be supplied at reasonable cost from the wells of plaintiff. They allege that in and by this suit, instituted September 15, 1930, approximately five months before plaintiff commenced the production of said excess oil and without having violated the said law or orders to any substantial extent, plaintiff took steps to test the constitutionality of said penalties; and they further allege that it was and is wholly unnecessary for plaintiff to violate said law and/or orders in order to test it or their constitutionality. They further allege that in producing said excess amount of crude oil, complainant deliberately violated the said law and orders, notwithstanding the fact that this court by its order entered herein on the — day of October, 1930, and again by its order entered herein on February 9, 1931, sustained the constitutionality of said law and orders and denied a temporary injunction against the enforcement of said act and orders of the Commission pursuant thereto, and notwithstanding the fact that plaintiff has taken and perfected an appeal to the United States [fol. 88] Supreme Court from said order of February 9, 1931. They further allege that the plaintiff attempted to conceal from the defendant Corporation Commission and its members, agents, servants and employees the fact that

it was producing more oil from its said Oklahoma City wells than the amount allowed by the said orders of the said Commission, and that it succeeded in concealing the same from them until shortly before May 28, 1931, the latter being the date upon which the defendant J. Berry King, Attorney General of Oklahoma, filed in the District Court of Oklahoma County, the suit of the State of Oklahoma ex Rel. J. Berry King, Attorney General vs. Champlin Refining Company, Cause No. 68950, which is pleaded in paragraph XXXIV of said bill; and in this connection they further allege that plaintiff made reports from day to day and time to time to Otto Bradford, Umpire for the Oklahoma City field, of an amount of production from its wells that was within and which conformed to the allowable production thereof as fixed by said orders, and deliberately concealed from him and the defendants herein, and secretly overproduced said amount of approximately 300,000 barrles of excess oil from said wells. They admit the institution of the suit last above mentioned in the District Court of Oklahoma County, Oklahoma, and that in the petition filed in said suit the plaintiff therein sought the relief alleged by plaintiff in said paragraph XXXIV of its bill, and admit that temporary injunction was obtained as alleged in said paragraph of said bill. They admit that on June 13, 1931, this honorable court made and entered an order restraining the defendants herein as is shown in and by Exhibit "K" attached to the said bill of complaint. They further allege that the plaintiff executed its bond as provided by said order of June 13, 1931, and they allege that thereupon the defendant, J. Berry King, Attorney General, dismissed the said suit No. 68950. Defendants further allege that by reason of the facts herein before set forth relating to the said excess production from its wells in the Oklahoma City field, plaintiff is not in this court with clean hands and is not entitled to any relief at the hands of [fol. 89] this court, particularly to restrain the enforcement of the provisions of said law pending the ultimate determination of this suit, either in this court or on appeal to the United States Supreme Court, even if otherwise it might be entitled to an injunction restraining the enforcement of the penalties pending such final determination or pending such appeal.

Defendants deny that the penalties prescribed by said Oklahoma Statutes for a violation of the orders of the Cor-

poration Commission are void as to the plaintiff for any reasons assigned by the plaintiff and particularly in paragraph XXXIV of said bill or for any other reason or reasons. They deny that the penalties prescribed in said provisions of said statutes are so drastic that no owner of oil producing properties in the State of Oklahoma could invoke the jurisdiction of any court to test the validity of said Act and the orders, rules and regulations of said Commission made and entered pursuant thereto, except at the risk of confiscation of his or its properties and the incurring of the payment of large sums of money by way of fines and penalties and the emprisonment of such owner and its officers, agents and employees in jail or prison for long terms, and in this connection allege that said Act of February 11, 1915, provides for a judicial review of the orders, rules and regulations of the Commission made and entered pursuant to the provisions of said act without the necessity of first violating said Act and/or the said orders, rules and regulations, and that thereunder the right of judicial review is secured to any person, firm or corporation affected by any such orders, without the necessity of him or it first violating the said Act and/or any such orders, rules and regulations issued and promulgated pursuant thereto. They deny that Section 9 of said Act of February 11, 1915, or any other of the provisions of said Act, deprive the plaintiff of its property without due process of law, or that the same constitutes an unusual punishment or a bill of attainder.

[fol. 90] They deny that pending the final determination of plaintiff's appeal from the order of this court of February 9, 1931, the plaintiff will suffer great and irreparable or any injury by reason of its compliance with the said Act and the orders, rules and regulations of said Commission, and that the plaintiff will have been deprived of its property and the use thereof without remedy against the State of Oklahoma or the defendants herein or any of them. Defendants state that the said penalties are not enormous or severe when the amount thereof is compared to the value of the oil which may be produced from the wells of the plaintiff and the tremendous and inestimable waste which plaintiff would commit if its wells should be operated in violation of said laws and orders.

They deny that the institution of proceedings before the Corporation Commission under the provisions of Section 8 and 9 of the said Act or other proceedings will destroy plaintiff's financial credit and embarrass it in the operation of its business to its great loss or any loss, and that the same will otherwise work irreparable or any injury to the plaintiff.

34. Defendants state that if the plaintiff be deterred from violating the said orders pendente lite by fear of the imposition of said penalties, it will not thereby suffer any injury whatsoever in the loss of any recoverable oil from the lands covered by its leases, and this for the reason that the owners of wells on lands adjoining and in the vicinity of the plaintiff's wells are observing said orders and are not producing from the wells on their lands a greater proportionate part of the content of the reservoir than their respective ratable shares thereof as fixed by said orders, and are not draining oil from plaintiff's lands. They further allege that the loss to plaintiff by having to pay fines imposed by defendants under the penalty provisions of said statute for violations of the said orders during the pendency of this suit, would not be comparable to the much greater losses [fol. 91] which would be sustained by the owners of oil wells upon lands adjacent to and in the vicinity of plaintiff's wells due to drainage which would occur from their lands into plaintiff's wells, and the waste of gas energy to the great detriment of adjoining owners, if plaintiff's wells are operated to the extent which plaintiff alleges in its bill of complaint it desires to operate them; and in this connection they allege that the owners of wells in the neighborhood of plaintiff's wells are operating same in obedience to the said proration orders.

35. They admit that plaintiff filed on November 7, 1930, with the defendant Corporation Commission, its written special appearance and motion to vacate the rules, regulations and orders herein complained of and that in said motion it sets forth matters as alleged in paragraph XXXV of said bill, except that they deny that it set forth therein substantially all the facts and allegations contained in said bill; they admit that said motion contained the prayer as copied in said paragraph XXXV of said bill, and admit that said motion was heard by said Commission on No-

vember 20, 1930, was opposed by certain operators, and that on November 21, 1930, said Commission denied said Motion, but they allege that plaintiff took no appeal to the Supreme Court from said action of said Commission, but elected instead thereof to file an amended complaint, in this suit in this court.

36. With reference to the allegations of paragraph XXXVI of said bill of complaint, defendants state that they are not sufficiently advised to now assume a position on the question of law as to whether said orders are legislative acts of said Commission or are merely ministerial acts or quasi-judicial acts, and, hence, they deny that said Commission is the only tribunal provided by the laws of said state endowed with final, or any, legislative authority in making said orders; but they state that in any event, under the provision of Section 7 of said Oil Conservation Act (Sec. 7960 C. O. S. 1921), appellate jurisdiction is conferred upon said Supreme Court to review the action of said Commis- [fol. 92] sion in making any order or orders under said Act, and such appeal may be taken by any person, firm or corporation shown by the record to be interested therein, in the same manner and time as appeals are allowed by law from other orders of said Commission; and said orders so appealed from shall not be superseded by the mere fact of such appeal being taken, but shall be and remain in full force and effect until legally suspended or set aside by said Supreme Court; and under the provisions of Section 20, 21, and 22 of Article IX of the Constitution of Oklahoma (the first of which empowers the Legislature to provide, as it did by said Section 7 of said Act, for, appeals from actions of the said Commission in respect to matters other than those relating to transportation and transmission companies), the Supreme Court of said State has jurisdiction to review reverse, correct or annual any action of the Commission and, pendente lite, to suspend or delay the execution or operation thereof on appeal to it, the review to be upon the record made before the said Commission, including a consideration of the evidence introduced before said Commission and the reasons assigned by the Commission for the making of its order, rule or regulation so appealed from, and said Supreme Court has jurisdiction to consider and determine the reasonableness and justness of the action of the Commission appealed from, as well as any other mat-

ter arising upon such appeal, and may, before the appeal is finally decided require the Commission to take further and additional evidence to be certified to said court, the only limitation upon said court being that it shall regard the action of the Commission appealed from as prima facie, just, reasonable and correct, meaning, as interpreted by the Supreme Court of said state, only that the burden rests upon the party appealing to show that such order is not just, reasonable or correct and not that the order must be sustained if there is any competent evidence introduced before the Commission supporting it. On any such appeal [fol. 93] said Supreme Court is empowered to review and weigh the evidence, and decide all questions of law and fact. Therefore, the State law provides a fair opportunity for submitting all the issues by the plaintiff in its bill filed herein to a judicial tribunal of said state for determination upon its own independent judgment of all of said issues both at law and fact; and said remedy is substantial, adequate and safely available to plaintiff, and hence provides for plaintiff due process of law.

37. Answering the allegations of the Amendment to plaintiff's Third Amend*ment* and Supplemental Bill of Complaint, which amendment was filed herein on June 30, 1931, subsequent to the filing of said Third Amended and Supplemental Bill, defendants deny that the rules, regulations and orders of said Commission are unconstitutional and void under the Fourteenth Amendment to the National Constitution in that they treat all of the four separate producing sands in the Oklahoma City area as one common pool and deny that by so treating their sands said orders arbitrarily or otherwise discriminate against the producers, including the plaintiff who has wells in the most productive sands, and deny that said separate and distinct producing formations or structures cannot drain one another, and allege that there are a large number of oil wells drilled into said formations which penetrate and produce oil from more than one of said formations or structures, and that by said wells the said structures and formations have been connected and they further allege that there is no market for crude oil from any one of said producing sands as distinguished from the other, but that the Oklahoma City area, including each and all of said separate producing sands and formations, has a common market outlet and transportation and

marketing facilities that are common to the field as a whole. However, defendants allege that there is now pending before the defendant, Corporation Commission, an application by two of the producers in said area, supported by some of the other producers therein, and resisted by other of the producers therein, for a classification of producing formations and for an allowance of a greater production from some than from the others, and a distribution of the market demand for oil produced in the Oklahoma City pool [fol. 94] among the separate producing formations upon a basis which will allow a varied percentage of production from said several producing formations instead of one and the same percentage of allowable producing from each and all thereof, and that a hearing has heretofore been conducted by the defendant Corporation Commission upon said application, and evidence heard for and against the same, and evidence was adduced tending to show that by reason of the wells drilled into all of said formations, the same are not connected drawing oil from one formation to the other and utilizing the gas energy in one formation in producing oil from another; and that the defendant Corporation Commission now has said application under advisement and consideration and will in due course determine the same. They further allege that the plaintiff herein has never made application to the defendant Corporation Commission for any classification of the separate producing sands or formations in the said Oklahoma City field and that plaintiff herein, although notified of the hearing of the application made to the defendant Corporation Commission hereinabove mentioned, failed and neglected to appear at the said hearing or to participate therein.

Wherefore defendants pray that said Third Amended and Supplemental Bill of Complaint and this suit be dismissed at plaintiff's costs; that the said order of June 13, 1931, be vacated and set aside; and that defendants and each of them have all other relief to which they may be entitled, together with their costs herein laid out and expended.

J. Berry King, Attorney General of the State of Oklahoma. Jesse L. Ballard, Assistant Attorney General of the State of Oklahoma. E. S. Ratliff, Attorney for the Defendant Corporation Commission.

[fols. 95-119] *Duly sworn to by Paul A. Walker et al. Jurats omitted in printing.*

Exhibits not here reprinted, being included in their entirety in the volume of exhibits.

[fol. 120] IN UNITED STATES DISTRICT COURT

[Title omitted]

PLAINTIFF'S REQUESTED FINDINGS OF FACT—Filed Aug. 18, 1931

Comes now the Champlin Refining Company, a New Mexico Corporation, plaintiff in this cause, and respectfully requests this honorable court to make the following specific findings of fact in determination thereof.

[fol. 121] (1) That the Champlin Refining Company is a corporation, organized and existing under the laws of the State of New Mexico, and by reason thereof, a citizen of that state; that it has complied with the laws of the State of Oklahoma, regulating the admission of foreign corporations within the said State of Oklahoma; is now, and for a long time prior to the filing of this suit has been, authorized and admitted to do business within the State of Oklahoma, with its principal place of business in the City of Enid, Garfield County, Oklahoma; that the matter herein in controversy is in excess of Three Thousand and no/100 ($3,000.00) Dollars, exclusive of interest and costs, and arises under the Constitution of the United States of America;

(2) That the defendants, Paul Walker, E. R. Hughes, and C. C. Childers, the duly elected, qualified and acting Corporation Commissioners of the State of Oklahoma, the defendant J. Berry King, the duly elected, qualified and acting Attorney General of the State of Oklahoma, and Lewis R. Morris, the duly elected, qualified and acting County Attorney within and for Oklahoma County, Oklahoma, are all citizens of the State of Oklahoma, with their

places of residence and official domiciles within the Western Federal Judicial District thereof;

(3) That the Corporation Commission of the State of Oklahoma is a board created and vested with certain powers, by article 9 of the Constitution of the state of Oklahoma; that the defendants, Paul Walker, E. R. Hughes and C. C. Childers, are the duly elected, qualified and acting Corporation Commissioners of the State of Oklahoma; that at all times herein mentioned prior to January 10, 1931, the defendant Fred Capshaw, was a duly elected, qualified and acting member of the Corporation Commission of the State [fol. 122] of Oklahoma; that his term of office as such member of such board, expired on the 10th day of January, 1931; that Paul Walker, having been duly elected as the successor in office to the said Fred Capshaw, as a member of said Corporation Commission, qualified as such member thereof, on the 10th day of January, 1931, and since then has been, and now is, a duly elected, qualified and acting member of the Corporation Commission of the State of Oklahoma; that subsequently an order was entered in this cause, permitting it to be continued and maintained against Paul Walker as the successor in office to the defendant, Fred Capshaw, as a member of the Corporation Commission of the State of Oklahoma, and substituting the said Paul Walker as a party defendant in lieu of the said Fred Capshaw, in said cause;

(4) That the Champlin Refining Company is now, and since its incorporation, has been, engaged in the business of producing, refining, transporting and marketing crude oil and its by-products, in interstate and intrastate commerce, thereby being identified in the industry, as an integrated company, as distinguished from a non-integrated company producing crude oil only;

That it owns and operates a refinery at Enid, Oklahoma, with a refining capacity of approximately 15,000 barrels of crude oil per day; that it manufactures in said plant, 106 types of products (plaintiff's Exhibit #13, Rec., p. 103); that it owns approximately 735 tank cars, which it uses in interstate commerce, in the distribution of its refined products, among its customers, in Texas, Colorado, Kansas, Arkansas, Missouri, Minnesota, Iowa, Nebraska, South Dakota, North Dakota, Wisconsin, Michigan, Illinois, New Mexico and California; that it owns, controls and operates,

[fol. 123] approximately 470 miles of pipeline for the transportation of crude oil within Oklahoma and states adjacent thereto; that it owns and operates 263 retail gasoline filling stations in conjunction with 256 wholesale or bulk gasoline stations within the States of Oklahoma, Kansas, Texas, Iowa, Colorado, Illinois, Nebraska and Missouri; that the properties of the plaintiff corporation, represent an investment cost as follows:

Refinery	$3,840,038.93
Pipelines	3,146,228.48
Tank cars	1,295,202.21
Filling stations within Oklahoma	1,738,731.40
Filling stations outside Oklahoma	1,357,950.48
Total Investment	$11,378,151.50

(Plaintiff's Exhibit #28, Rec., p. 239);

(5) That the plaintiff corporation is the owner and holder of the oil, gas and mineral mining leases set forth upon pages 4 and 5 of its Third Amended and Supplemental Bill of Complaint, in what is generally known as the "Oklahoma City field"; that it is also the owner of an oil, gas and mineral mining lease on

The East Half of the Southeast Quarter of the Northeast Quarter of Section 14, Township 7 North, Range 6 East, and an undivided one-half interest in the South Half of the Southwest Quarter of Section 9, Township 6, Range 6, all lying in Seminole County, State of Oklahoma,

and in what is generally known as the "Greater Seminole field"; together with many other oil, gas and mineral mining leaseholds, in other parts of the State of Oklahoma;

(6) That the plaintiff Corporation has drilled nine (9) wells to completion, upon the above described leasehold [fol. 124] properties in the Oklahoma City field, at an average cost of approximately $125,000.00, which wells have an aggregate potential capacity of 151,000 barrels of crude oil per day, measured in the manner adopted by the Corporation Commission of the State of Oklahoma for the determination of potentials; that the plaintiff Corporation is drilling a tenth well in said Oklahoma City field, which will cost approximately $140,000.00, and by reason of its location in

the prolific Wilcox area, may reasonably be expected to be an oil well;

That the total investment in the drilling of the said wells in said Oklahoma City field, in approximately the sum of $1,265,000.00, is in addition to the plaintiff's investment in fixed assets, in the total sum of $11,378,151.50, as hereinbefore found (plaintiff's Exhibit No. 27, Rec., p. 239);

That a pipeline of eighteen thousand barrels daily capacity, has been completed and placed in operation by the plaintiff Corporation, connecting the plaintiff's said wells upon the foregoing described leaseholds, with its refinery at Enid, Oklahoma, a distance of 87 miles;

That the plaintiff Corporation has been for some time past, and now is, operating its refinery at 85% capacity (Rec., p. 104), and did market in Interstate Commerce in the year 1930, one hundred eleven million, six hundred sixty-nine thousand, five hundred eighty-five (111,669,585) gallons of refined products, of a sales value of $6,752,274.31 (Exhibit No. 25, Rec., p. 237); and during the like period of time, did market within the State of Oklahoma, in like refined products, fifty million, four hundred nine thousand, nine hundred twelve (50,409,912) gallons, of a sales value of $2,200,798.01 (Exhibit No. 25, Rec., p. 237); and that during the first five months of 1931, did market in Inter-[fol. 125] state Commerce thirty-eight million, five hundred seventy-four thousand, eight hundred ninety-five (38,574,985) gallons of like refined products, of a sales value of $1,540,186.72 (Exhibit No. 25, Rec., p. 237); and did market in the like period, within the State of Oklahoma, fourteen million, five hundred twenty-nine thousand, eighty-four (14,529,084) gallons of like refined products, of a sales value of $438,126.12 (Exhibit No. 25, Rec., p. 237; see also plaintiff's Exhibit No. 27, Rec., p. 239);

That the plaintiff Corporation on June 24th, 1931, had in storage 52,393 barrels of gasoline (Rec., p. 101), and 75,964 barrels of crude oil (Rec., p. 101) with the refinery using 16,000 barrels of crude oil daily (Rec., p. 101);

(7) That the plaintiff Corporation has not run any crude oil produced in its Oklahoma City field wells to above ground or other storage, that it has not physically wasted any crude oil which it has produced in the Oklahoma City field, or in any other field; that it has not used any artificial means to increase the flow in any well in the Oklahoma City

field; that it has a market demand for all refined products that it can obtain from the daily capacity of its pipe lines from said wells in the Oklahoma City field, so owned by it, to its refinery at Enid, Oklahoma, and will in the manufacture thereof use frugal care to prevent loss in the crude oil so utilized;

(8) That at the time the plaintiff Corporation constructed its pipeline (which was one of the first built into the Oklahoma City field) and commenced to drill its wells, the allowable production in said field under the administrative orders of the Corporation Commission, was twenty-five (25%) per cent of its potential; that in reliance upon the warranted belief, that discrimination as between fields, [fol. 126] would not be later practiced under proration, by agents of the state, the plaintiff Corporation did invest more than Two Million ($2,000,000.00) Dollars, in said pipelines and wells;

(9) That modern, all-steel, above ground storage is not wasteful of crude oil, within the most restricted definition of conservation, that such type of storage will conserve oil with "practically no loss" (Rec., pp. 89 and 102); that on 38° to 40° Baume Oklahoma crude oil, the loss in such type of storage in the first year would be about one (1%) per cent when stored in 80,000-barrel tanks (Rec., p. 90; see also Rec., p. 102); that such type of tank will last twenty to thirty years, and will cost 25¢ per barrel when completed (Rec., p. 91), that the loss by evaporation or otherwise, during the second year, will be 8/10 of 1%, third year 7/10 of 1%, with a correspondingly diminishing loss each year thereafter; that in five years the total loss would be not more than 3½% to 4% (Rec., p. 92); that the loss in steel gas tight storage tanks in a year's storage from a refining standpoint is negligible (Rec., p. 103);

(10) That before any of the orders of the Corporation Commission herein complained of were made or promulgated, the plaintiff Corporation had drilled and equipped nine (9) wells on its leasehold properties in the Greater Seminole field at an approximate cost of $569,000.00; that said wells so drilled in that area had on the 15th day of September, 1930, a potential capacity of 450 barrels of crude oil per day;

(11) That the plaintiff Corporation owns and operates oil and gas leaseholds in the State of Oklahoma in fields other than those above described which are also affected by the orders of the Corporation Commission of the State of Oklahoma, which other producing properties have a potential capacity of approximately 1200 barrels of crude oil per day;

[fol. 127] (12) That at or about the time of the passage of the act in question, and its subsequent approval, there existed in the State of Oklahoma an overproduction of crude oil, and the Corporation Commission concerned itself with an attempted regulation thereof;

(a) That on the 22nd day of September, A. D. 1914, the Corporation Commission entered its order No. 846, cause No. 2041, being a voluminous opinion by the Commission, in the matter of production of crude oil in excess of market demand (plaintiff's Exhibit No. 39, Rec., p. 283); and thereafter (p. 20 of the exhibit) ordered:

"that all producers shall not take more oil from their wells than can be sold upon the market at 65¢ per barrel, or stored in regulation steel tankage,"

thereby finding that to store oil in regulation steel tankage, was not wasteful within the spirit of the times that brought about the legislation being here considered.

(b) That on the first day of October, 1914, the Corporation Commission issued its order No. 847, cause No. 2041, (plaintiff's Exhibit No. 37) adjudging that:

"no producer in the Healdton field, shall take any oil from the oil sands of that field for sale, at a price less than 50¢ per barrel, until such time as the conditions can be fully investigated by the Commission, and no common purchaser or other person, shall purchase oil hereafter taken from the oil sands of the Healdton field, at less than 50¢ per barrel, until such time as the Commission can hear and determine the necessities for the less price.

"All parties having storage oil are hereby notified that if the same is sold at less than 50¢ per barrel without permission of the Commission, after an investigation as to

the quantity of the oil, same will be prorated against their runs through the pipelines."

[fol. 128] (c) That on February 18th, 1916, after the passage of the Conservation Act of the State of Oklahoma, the Corporation Commission had before it the matter of the placing — oil in steel storage, and in the sixth subdivision of its order of that date (plaintiff's Exhibit No. 40, Rec., p. 283), the following only objection to such practice was found:

"That this (the utilization of steel storage) aggravates the situation, as the small producers are unable to furnish storage. These producers unable to store oil, will be compelled to accept any price or lose their prorata of oil from the common pool, thereby causing great economic loss";

thus finding that such storage in steel above ground, was not wasteful, and was objectionable only from the standpoint of the cost of storage to the small producer;

In that same order, an opinion of the Corporation Commission, that section 2 of chapter 25 of the Session Laws of 1915, supra (page 4 of the order, plaintiff's Exhibit No. 40, Rec., p. 283), was held to be without effect "because it was impracticable to fix a price of oil based upon market or commercial conditions," following the previous order No. 846 of the Corporation Commission in cause No. 2041 (plaintiff's Exhibit No. 39; Rec., p. 283); it being further there held "that the only theory upon which the state could fix the price of a commodity, was to prevent extortion upon the same theory, and under the same law and the same Constitution that the price for the loan of money is fixed by statute";

The Corporation Commission in that order, further found and held that:

"The Commission finds the evidence in this case to be insufficient upon which to base a conclusion as to the value of crude oil based upon the selling price of refined products. At the time the complaint was filed, oil in the Heald-[fol. 129] ton field was selling at 35 cents per barrel. It is now (outside of the record) selling it at from 75 cents to $1 per barrel. The by-products fluctuate in price, whether because of increased demand or because the price

may be influenced by monopoly may not in all instances be easily determined. If the price of the by-products should be advanced at some time when the demand was greater than others, under the theory of this law the price of crude oil would be advanced, and it would make it impossible to reduce the price of the refined product, and have the effect of increasing the refined products to the consuming public, when the relation between the crude oil and refined oil was established by the Commission, if such a thing were possible.

"Without going into all the details of the evidence with reference to the relative value of the Healdton oil with other oils, we are of the opinion that the fixing of a price of crude oil under Sec. 2 of this act is absolutely impossible and impracticable. The complaint is therefore dismissed."

(d) That the Corporation Commission of Oklahoma in its order No. 920, cause No. 2287, entered June 15, 1915, offered in evidence by the defendants at the time the cause was argued on the 3rd day of August, 1931, found in the ninth subdivision thereof that:

"The storage of oil by any common purchaser or purchasers, bought ratably in open market bona fide to be held as stock under the usual custom of the trade, for the purpose of refining or for sale (of) the consumer is not prohibited by the rules hereinbefore prescribed."

(e) That the Corporation Commission by its order No. 846A, cause No. 2041 (plaintiff's Exhibit No. 37, record, page 282) undated but between September 22nd, 1914 (No. 846, Rec., p. 283), and October 1st, 1914 (No. 847, Rec., p. 282), found that "no corporation, firm or individual [fol. 130] shall take oil from the oil sands of Oklahoma when same cannot be sold at a price not less than 55 cents, and no individual, firm or corporation shall purchase oil in Oklahoma at a less price than 55 cents until further order of the Commission;"

(f) That the first order of the Corporation Commission bearing directly upon the present operation of proration in Oklahoma was entered on June 30th, 1930, numbered 5189 (plaintiff's Exhibit No. 33, record, page 281), and

among other things names Ray M. Collins "umpire and agent of the Corporation Commission to enforce the rules and regulations herein made, and he is hereby authorized to employ as many assistants as he shall deem necessary. To assist the umpire in administering these rules and regulations the following Committee of Operators are appointed as agents of the Corporation Commission for the following named pools":

Greater Seminole:

J. S. Sidwell, Prairie;
J. J. Conry, Carter;
R. F. McArthur, Barnsdall;
Kenneth Winship, Gypsy;
L. C. Hawkins, Magnolia.

Oklahoma City:

M. J. Kirwan, I. T. I. O.;
J. S. Sidwell, Prairie;
Wirt Franklin, Cromwell-Franklin;
Ralph Roark, Shell;
Glenn Harroun, Sinclair.

"It is therefore ordered * * *

"Beginning July 1, 1930, and continuing until and including September 30th, 1930, the production of all wells in the following pools shall be curtailed 33⅓% of their potential production: Allen Dome (Wilcox and Cromwell sands), Bowlegs, Carr City, Earlsboro (old), Earlsboro [fol. 131] Townsite, Little River, East Little River, Marshall-Lovell, Mission, Sasakwa, Searight, Seminole, East Seminole and St. Louis."

"Beginning July 1st, 1930, and continuing until and including September 30, 1930, the allowable production of all wells in the Oklahoma City pool shall be that proportion of their potential production that the reasonable market demand from the pools as a whole shall bear to the potential production of the pool as a whole. Provided, that the maximum allowed production shall be 25 percent of potential production; and, provided, further, that whatever demand for petroleum from the Oklahoma City pool that may exist shall be prorated and allocated among all the

producing leases. In case the reasonable market demand shall at any time be less than 25% of the potential production the umpire and Operators' Committee shall fix such percentage of potential production as will allow a production equal to said reasonable market demand."

* * * * * * *

"That all purchasers and carriers of oil in the State of Oklahoma be and they are hereby forbidden to purchase or carry oil produced in violation of these orders of the Commission."

(g) That thereafter on July 24th, 1930, the Corporation Commission entered its order #5246 (plaintiff's Exhibit #33, Rec., p. 281) and among other things found that,

"That since the issuance of the original order herein the potential production of crude oil in the State of Oklahoma has increased to 1,400,523 barrels per day, while the reasonable market demand has decreased from 650,000 barrels to 550,000 barrels per day, a decrease of 100,000 barrels in daily average demand since June 30th."

"That it is, therefore, necessary to further curtail the output of crude petroleum in Oklahoma in order to prevent waste as defined by the laws of this state, and that the original order herein should be modified by reducing the [fol. 132] percentages of permitted production in the pools herein mentioned by 25% according to the following schedule:

Production thereupon allocated in said order:

	July, 1930		August, 1930	
	Estimated potential	Estimated production	Estimated potential	Estimated production
Greater Seminole area 50%	305,712	152,856	290,861	145,431
Earlsboro 25%	94,046	25,931	75,000	23,750
West-Asher, et al., 18¾%	139,765	26,206	123,000	23,063
Oklahoma City 14% (approximately)	600,000	84,007	600,000	94,756
Wells, in prorated	10,000	10,000	10,000	10,000
Total prorated areas	1,149,523	299,000	1,098,861	297,000
Outside areas not prorated	251,000	251,000	253,000	253,000
Total state	1,400,523	550,000	1,351,861	550,000

With the following conclusion thereon:

"The Corporation Commission further finds that by applying a uniform percentage reduction of the original percentages named in the order of June 30th, the said pro-

rated pools will be maintained in the same relation to each other as under said original order, and that unfair discrimination as between said pools and as between the leases therein will be prevented, and that the adoption of said schedule set forth in paragraph (d) is necessary in order to prevent waste of petroleum."

"It is therefore ordered, * * *

"Beginning July 15, 1930, and continuing until including August 31, 1930, the production of all wells in the following pools shall be curtailed 50% of their potential production; Allen Dome (Wilcox and Cromwell sands), Bowlegs, Carr City, Earlsboro (old), Earlsboro Townsite, Little River, East Little River, Marshall-Lovell, Maud, Mission, Sasakwa, Searight, Seminole, East Seminole and St. Louis."

"Beginning July 15, 1930, and continuing until and including August 31, 1930, the allowable production of all [fol. 133] wells in the Oklahoma City pool shall be that proportion of their potential production that the reasonable market demand from the pool as a whole shall bear to the potential production of the pool as a whole. Provided, that the maximum allowed production shall be 18¾% of potential production; and provided, further, that whatever demand for petroleum from the Oklahoma City pool that may exist shall be prorated and allocated among all the producing leases. In case the reasonable market demand shall at any time be less than 18¾% of the potential production the umpire and Operators' Committee shall fix such percentage of potential production as will allow a production equal to said reasonable market demand."

* * * * * * *

"That all purchasers and carriers of oil in the State of Oklahoma be and they are hereby forbidden to purchase or carry oil produced in violation of these orders of the Commission."

(h) That thereafter on August 30th, 1930, the Corporation Commission entered its order No. 5292 (plaintiff's Exhibit No. 33, Rec., p. 281) upon the application of Ray M. Collins, and among others things found:

"That it is, therefore, necessary to further curtail the output of crude petroleum in Oklahoma for the month of

September, 1930, in order to prevent waste as defined by the laws of this state, and that the original order herein should be modified by reducing the percentages of permitted production in the pools herein mentioned by 25% according to the following schedule:

"Production thereupon allocated in said order:

[fol. 134]

	September, 1930	
	Potential estimated	Production estimated
Greater Seminole Area 50%	293,268	146,634
Oklahoma City 12½% (approximately)	700,000	88,903
Earlsboro 25%	75,000	23,750
West Asher & Konawa 18¾%	103,000	19,313
Tatums, et al.	44,850	6,400
Wells in Prorated Areas not prorated	5,000	5,000
Total Prorated Areas	1,221,118	290,000
Outside Areas (not prorated)	260,000	260,000
	1,481,118	550,000

thus constituting a finding that Oklahoma City with one-half of the state's estimated potential is allowed approximately 12½% of its production, for the month of September, 1930:

That said order thereupon finds:

"That by applying a uniform percentage reduction of the original percentages named in the order of June 30th, and said prorated pools will be maintained in the same relation to each other as under said original order, and that unfair discrimination as between said pools and as between the leases therein will be prevented, and that the adoption of said schedule set forth in paragraph (d) is necessary in order to prevent waste of petroleum."

• • • • • • • •

"That accordingly these conditions of waste now exist in said pools or are imminent and such waste should be prevented."

"It is therefore ordered, • • •

"Beginning September 1, 1930, and continuing until and including September 30, 1930, the production of all wells in

[fol. 135] the following pools shall be curtailed 50% of their potential production: Allen Dome (Wilcox and Cromwell sands), Bowlegs, Carr City, Earlsboro (old), Earlsboro Townsite, Little River, East Little River, Marshall-Lovell, Maud, Mission, Sasakwa, Searight, Seminole, East Seminole and St. Louis,"

"Beginning September 1, 1930, and continuing until and including September 30, 1930, the allowable production of all wells in the Oklahoma City pool shall be that proportion of their potential production that the reasonable market demand from the pool as a whole shall bear to the potential production of the pool as a whole. Provided, that the maximum allowed production shall be 18¾% of potential production; and, provided further, that whatever demand for petroleum from the Oklahoma City pool may exist shall be prorated and allocated among all the producing leases. In case the reasonable market demand shall at any time be less than 18¾% of the potential production the umpire and Operators' Committee shall fix such percentage of potential production as will allow a production equal to said reasonable market demand."

"That all purchasers and carriers of oil in the State of Oklahoma be and they are hereby forbidden to purchase or carry oil produced in violation of these orders of the Commission."

(i) That on September 30th, 1930, the Corporation Commission entered its order No. 5337 (plaintiff's Exhibit No. 33, record, page 281) extending in force its previous orders Nos. 5189, 5246, 5292, and all supplemental orders thereunder, and thereafter on October 6th, 1930, entered its findings of fact, opinion and order No. 5343 (plaintiff's Exhibit No. 33, record, page 281) to the effect that:

"That by reason of the matters stated above, there are now approximately twenty producers who do not have pipe line connections and who are under-produced under the [fol. 136] terms of said order; that, as nearly as can be estimated, the total amount of under-production within the terms of said order in the Oklahoma City field, is approximately 1,209,000 barrels as of September 25th, 1930, and that the additional amount which has been produced within the terms of said order which has not been run and is in storage on the leases amount to 1,333,000 barrels, making a

total of under-run and under-produced oil of 8,542,000 barrels."

"It is therefore ordered . . .

"That all new wells being brought on production produce for a period of eight hours for test, that the remainder of the twenty-four hour test period (namely sixteen hours) be allowed the said well upon its completion of its sixty-five day shut down time; that all wells that are now serving their sixty-five day shut down time, be permitted to produce a maximum of eight hours in each twelve-day period following the completion of their sixty-five day shut down time; that all wells that are now on production schedule be likewise permitted to produce a maximum of eight hours in each twelve-day period; that the amount of time that wells in the Oklahoma City field are permitted to produce during each twelve-day period should be revised when the wells that are now under-produced and the oil that is now in storage has been run to the pipe lines."

(j) That on October 10th, 1930, the Corporation Commission entered its order No. 5345 (plaintiff's Exhibit No. 33; Rec., p. 281), extending in force its previous orders Nos. 5189, 5246, 5337 and 5343, and all supplemental orders thereunder, until October 20th, 1930, and thereafter on October 28th, 1930, entered its order No. 5369 (plaintiff's Exhibit No. 33; Rec., p. 281), and among other things found:

"The Corporation Commission finds from the evidence that there is an overproduction of crude oil in the State of Oklahoma attended by waste of gas and of gas pressure and [fol. 137] that the producers of crude oil in the oil pools of Oklahoma are threatening to and will, unless restrained by the rules and regulations of the Corporation Commission, commit physical waste of crude oil, economic waste, underground waste, surface waste and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands, and that the commission of such waste is so imminent in each of the areas involved in this proceeding that orders, rules and regulations of this Commission are necessary in order to prevent such waste.

"The Commission further finds that there is a general overproduction and importation of crude and refined petroleum in the United States, and that this fact tends to

reduce the amount of crude oil that can be produced in the State of Oklahoma without waste; that the potential production of crude oil in the United States is at this time approximately 10,000,000 barrels per day, and imports of crude and refined petroleum aggregate about 300,000 barrels per day, thus creating a total possible current supply of 10,300,000 barrels per day as against an approximate daily demand for domestic use and export of 2,800,000 barrels per day. That by reason of this great over supply and threatened waste, potential production is now being curtailed in Oklahoma and other producing regions and unless there is a continuance of curtailment of production in the areas involved herein, the conservation measures now in effect in the other oil producing states may be abandoned, thus causing large quantities of petroleum to be produced in such other states in excess of their local demand and forced upon the market to the demoralization of the industry and a consequent increase in waste in this state and an undue exhaustion of our oil resources. The Commission finds that this petroleum situation constitutes a great state emergency and that the laws of the State of Oklahoma and the powers of the Corporation Commission should be availed of to remove the same."

[fol. 138] "The Commission further finds from the evidence that, in addition to the excess of potential and actual production and imports over current demand, there are stocks of petroleum on hand in the United States aggregating more than 685,000,000 barrels, which stocks are excessive and beyond the needs of the petroleum industry. That by reason of the excessive supply thus indicated, the purchasers of crude oil in Oklahoma are unwilling to purchase crude oil in Oklahoma for storage purposes in any amount that would be adequate to take care of the surplus of potential production over current demand and that, therefore, there is not sufficient empty tankage available to take care of said excess and unless potential production in Oklahoma is curtailed, much oil would necessarily go to earthen storage where it would evaporate and escape and thus be wasted. The Commission further finds that the storage of oil in Oklahoma under existing conditions would involve waste for the further reason that there is already an excess of stored oil locally and, there being an over-supply, oil now

stored would have to remain in storage for a great length of time and would deteriorate."

"The Commission finds from the evidence that in order to curtail the production of crude oil in Oklahoma in a manner to prevent the commission of waste and to protect the coequal rights of producers in each pool, it will be necessary to enforce proportionality of taking from the wells and leases in each of the pools where the potential production thereof exceeds the reasonable market demand therefrom, and that unless such proportionality is required, injustice would be done as between producers in the same pool in that drainage would occur from the less active leases or wells to the more active leases or wells, and undue proportion of the gas pressure would be utilized by some operators to the detriment of others and unfair discrimination would arise as between pools."

"The Commission further finds that the potential daily production of crude oil from the wells in Oklahoma during [fol. 139] the month of October, 1930, is and will be approximately 3,638,478 barrels and that during the months of November and December, 1930, the said potential daily production will be 4,142,872 barrels and 4,244,294 barrels respectively, and that the daily demand for crude oil from Oklahoma is and will be approximately 550,000 barrels in October, 545,000 barrels in November, and 535,000 barrels in December, 1930. That therefore, and by reason of the facts found in this order, the potential production from each of the pools and classes of pools involved in this proceeding is so far in excess of the reasonable market demand that the full potential production cannot be produced without waste."

* * * * * * *

And thereupon allocates production within the state in the following manner:

	October, 1930		November, 1930		December, 1930	
	Estimated potential	Estimated production	Estimated potential	Estimated production	Estimated potential	Estimated production
Class "A" Pools:						
Defined as all pools in State not heretofore prorated (page 12 of order)	259,280	202,965	257,040	201,770	254,950	200,725
Class "B":						
Greater Seminole area	277,433	138,716	268,752	134,375	259,950	129,975
Class "C":						
Earlsboro	58,415	15,935	58,965	16,033	58,510	15,880
Class "D":						
Konawa	89,500	18,188	88,365	17,933	84,234	17,117
Class "E":						
Asher-Wanette	95,000	22,200	88,000	22,200	81,000	22,200
Class "F":						
Tatums, et al	43,000	6,500	40,000	6,500	37,000	6,500
Class "G":						
Perry and Orlando	2,850	1,400	2,750	1,400	2,650	1,400
Class "H":						
Oklahoma City	2,800,000	131,095	3,319,000	134,589	3,446,000	131,003
Wil-cat wells	3,000	3,000	10,000	200	10,000	200
For testing	5,000	5,000	5,000	5,000	5,000	5,000
Unprorated small wells in prorated areas	5,000	5,000	5,000	5,000	5,000	5,000
Total	3,638,478	550,000	4,142,872	545,000	4,244,294	535,000

[fol. 140] That in the making of the foregoing proration schedule, identified as (f) in said order, the Commission finds, that:

" • • • the producers and purchasers in all of said pools were consulted and meetings of said producers and purchasers were held at which all of the foregoing factors were considered and that said schedule represents the consensus of opinion of said producers and purchasers as to reasonableness of arrangement, necessity and convenience of producers and purchasers and equity as between the various common sources of supply.

"The Commission finds that the basis of classification of pools for the application of the varying percentages of curtailment as shown by the schedule in paragarph (f) herein is the existing relation between the potential production of each pool and the amount of crude oil which can be produced from said pool without waste. That because said relation is not the same in all the pools involved, the percentages of curtailment must necessarily vary as between pools. A uniform percentage applied to all pools would result in the permitted production from some of them being less than the reasonable market demand therefrom, while in others the permitted production resulting from such uniform percentage would exceed the amount which could be produced therefrom without waste."

• • • • • • •

(Page 5 of order.)

And further finds that:

" • • • and that the market demand herein named is somewhat contingent upon transference by the purchasing companies of purchasing power from the 'Class A' pools herein to the Oklahoma City pool and upon ability to transfer pipeline connections, and the Commission therefore finds that the orders, rules and regulations should be made sufficiently flexible so that increases or decreases in market demand from said Oklahoma City pool and increases or decreases in potential production therefrom, can be recognized by ancillary orders of the Commission, and that [fol. 141] for this purpose the umpire and Operators' Committee should be instructed to compute from time to time,

the rate of curtailment necessary in order to conform the permitted production to the reasonable market demand from the said Oklahoma City pool and to report the same to the Commission with the facts in support thereof as a basis for such ancillary order; * * *" (Page 7 of order.)

And did further find that:

"(k) The Commission finds that the potential production of the State of Oklahoma now so far exceeds the reasonable market demand from said state as a whole, and the resulting curtailment of producing wells has become so drastic and severe, that it would be inequitable and unfair and discriminatory to hereafter permit full production from wild-cat wells hereafter drilled which open new pools, sands or zones, and the Commission therefore finds that all wild-cat wells or wells opening new pools, sands or zones completed or brought into production after the date of this order should be limited to a production of 50 barrels per well per day, after one day open flow for test, and until otherwise ordered by the Corporation Commission.

"The Corporation Commission has examined many witnesses in this case, and has afforded an opportunity for everyone interested to be heard. There has been some contention that proration of the Oklahoma oil pools is a scheme or device to limit production and to maintain the price of crude oil, but this Commission asserts that its orders have been and are now based solely upon the purpose to prevent waste of crude oil in the various oil pools of the state, and, in the process of so doing, to require ratable or proportional taking from each of the wells in a common source of supply or pool where curtailment of production from the pool as a whole is necessary to prevent waste, and that this Commission has exercised its independent judgment in prescribing the proration orders, and has not attempted to [fol. 142] influence price of crude oil or refined products, and that if any such effect has occurred it is purely incidental and not intended. In this connection the Commission finds that from 65% to 75% of the crude oil sold from the wells in Oklahoma is sold to refiners and purchasers who take it outside of the State of Oklahoma, and which oil so sold goes into the world market for petroleum in competition with crude oil from Venezuela, Mexico, Colombia, Peru, California, New Mexico, Kansas, Texas, Louisiana,

Arkansas, and other producing areas, and that the price at which it is sold is fixed, not by this Commission, but by the free play of competition and by the relation between supply and demand in the said world market; that the market price for said oil is evidenced by the price regularly posted and offered by the principal purchasers of oil, and that practically all of the oil that is sold in Oklahoma is sold at said regular posted market price, and that there is no evidence that proration in Oklahoma has had any effect upon said price."

. . . . . .

(Page 8 of order.)

And did further find, that:

" . . . from the evidence that crude oil and natural gas occur together, or in close proximity to each other in the ground, and that there is a common gas pressure throughout a common pool which exerts an energy or force to move the gas and oil toward the point of least resistance, and that therefore when wells are drilled into a pool or structure the oil and gas become migratory, and, having the power of self transmission, will move from one property to another, underground, in such pool; and that when some of the wells in such a common pool are permitted to produce at a greater proportion of their capacity than others, drainage occurs from the less active to the more active wells, if such disproportionate condition is continued; that in the Oklahoma City pool there is a heavy gas pressure which would cause such drainage should disproportionate taking of crude oil and gas be permitted; that the history of oil producing business in this and other sur- [fol. 143] rounding states shows that in the case of flush pools where proportional taking from the wells is not enforced, and where the full production from the pool cannot be taken, either because of inadequate transportation facilities or because the reasonable market demand does not equal the potential production, producers who do not have physical of market outlets will be forced to produce their well to capacity in order to prevent drainage of the oil to the wells of such producers as do have adequate physical or market outlets. In such cases, in the absence of adequate steel storage available to every producer, some of

them will flow the oil into earthen pits. This has occurred many times in the oil pools in Oklahoma and surrounding states and has always caused actual physical waste of the crude oil through evaporation, leakage, and washouts to a very large extent. The Commission finds that this would be the case in the Oklahoma City field, and in many other fields of the state if production were not curtailed as provided in this order." (Page 9 of order.)

* * * * * * *

"It was therefore ordered, that:

* * * * * * *

2

"Ray M. Collins is hereby appointed as umpire and agent of the Commission to enforce the rules and regulations herein made and he is hereby authorized to employ as many assistants as he shall deem necessary.

3

"Where percentage proration is applied a gauge of producing wells shall be taken in the following manner: The gauge to determine potential shall be taken by each operator in the pool in respect of the lease or leases owned by him therein and then producing, such gauge to be taken between the hours of seven a. m. on the day set by the order of the Commission, and seven a. m. on the following day. Prior to the taking of such gauge and in respect of each [fol. 144] producing lease covered hereby the umpire shall appoint a representative of an operator owning a lease adjoining the particular property to be gauged, and shall notify the operator whose property is to be gauged of the name of the representative, such notification to be given prior to the taking of such gauge. It shall be the positive duty of such representative to remain on the lease that is being gauged throughout the entire day that the gauge is being taken to witness the gauging of the production therefrom; and immediately upon the completion of such gauge, such witness and the operator whose property was gauged shall file a written statement with the umpire showing the production of said lease, and of each well thereon for the

day said gauge is taken. The production so shown shall constitute the potential for said lease until the next gauge is taken. During the time this order is in force a similar gauge of each property shall be taken from time to time as the umpire and Operator's Committee may designate but not less than once each month, except that in the entire Gerater Seminole area, aside from South Earlsboro, East Earlsboro, East Little River, Sasakwa, Konawa, West Asher-Wanette, Earlsboro Townsite and Wilcox wells in Allen pools, and in the 'Class A' pools, the gauge may, upon direction of the umpire, be determined by applying the proper decline curve for each lease so gauged."

* * * * * * *

"The Commission may, by ancillary order, temporarily reduce the allowable percentage of production for any pool upon the recommendation of the umpire and Operators' Committee that it is necessary to do so in order to allow producers who may be under-produced to catch up with their respective quotas." (Pages 10 and 11 of order.)

* * * * * * *

7

"That all purchasers and pipeline carriers of oil in the State of Oklahoma be and they are hereby forbidden to aid [fol. 145] or abet producers in violating this order by purchasing or carrying oil produced in violation of these orders of the Commission." (Page 12 of order.)

* * * * * * *

16

"* * * The umpire and Operators' Committee are directed to compute the percentage of proration from time to time as found necessary to conform the permitted production to the reasonable market demand and to report their findings to the Commission as a basis for an ancillary order.

"It is further ordered that whatever reasonable market demand from the pool shall exist at any time shall be pro-

rated and allocated among all the producing wells, so that each well shall receive its pro rata share of the reasonable market demand, and the pipeline companies are hereby directed to cooperate with the umpire in so arranging pipeline connections that there shall be no discriminations in favor of one producer and against another." (Page 15 of order.)

(k) That thereafter, on the 3rd day of November, 1930, the Corporation Commission entered its findings of fact, opinion and order No. 5374, modifying and supplementing order No. 5369 (both a part of plaintiff's Exhibit No. 33, Rec., p. 281), in the following principal particulars, to-wit:

"• • • • • • •

"Third. That it is necessary in order to equalize the ratable taking from the Oklahoma City oil pool and to equalize the opportunity of each producer in said field to produce and market his prorated share of oil produced from said pool, that order No. 5369 be supplemented and modified by requiring the over-produced wells and the evenly produced wells be shut in and the production curtailed until such time as the under-produced operators and wells shall have had opportunities through pipeline facilities [fol. 146] and marketing facilities, to make up such underproduction in the ratable taking from said field." (Page 2 of order.)

• • • • • • •

"Sixth. Oil in storage representing under-run production which any operator has heretofore been entitled to produce and market, shall be considered as oil which the producer and owner is entitled to run, transport and dispose of under the terms and provisions of this order." (Page 3 of order.)

(l) Thereafter, on the 4th day of December, 1930, the Corporation Commission entered its order No. 5396 (plaintiff's Exhibit No. 33, Rec., pp. 281), the material portions of the findings therein being as follows:

"• • • It has also been suggested at different times, without dissention or dispute, that certain operators in the

Oklahoma City pool have produced their wells by the method commonly termed 'stop-cocking'; that is, by using the time allotted to any given lease in the production of the wells by heads and not continuously for the period of time allotted to the lease or to the well. This method of production, it is agreed results in an unfair taking from numerous wells in the field, as compared to the taking of other wells which are operated on an even time basis—that is, by opening the well and allowing it to stay open and flow continuously for the period of time during which it is entitled to flow under the time basis of proration." (Page 1 of order.)

The Commission thereupon proceeds to find:

"* * * * * * *

"Second. * * * in the event a well which is making up under-production under the terms and provisions of order No. 5374 adopted November 3, 1930, is not able to produce continuously for a full period as above defined, solely on account of the fact that the battery of lease tankage to which such well is connected is full, then and in that [fol. 147] event such well shall not be charged with the full period, but shall be charged with the portion thereof prior to the hour and minute on which such battery of lease tankage became full, and the fact that such well was unable to produce for a full period solely for such reason, and the number and capacity in barrels of the battery of lease tankage to which such well is connected shall be stated in the verified statement to be filed with the Corporation Commission as hereinabove provided." (Page 2 of order.)

"It is therefore ordered, that:

* * * * * * *

"Wells under-produced more than four hours, shall be entitled to make up such underage in 4 hour-periods to be computed as above provided. If any such underproduced well, in making up its underage, comes to a point when its underage is less than four hours, then such remaining underage shall be taken continuously, provided, in the event a well which is making up under-production in pur-

suance of order No. 5374, entered herein on November 3, 1930, is not able to produce continuously for a full period as above defined, solely on account of the fact that the battery of lease tankage to which such well is connected is full, then and in that event such well shall not be charged with the full period, but shall be charged with the portion thereof prior to the hour and minute on which such battery of lease tankage became full, and the fact that such well was able to produce for a full period solely for such reason, and the number and capacity in barrels of the battery of lease tankage to which such well is connected shall be stated in the verified statement to be filed with the Corporation Commission as hereinabove provided." (Page 4 of order.)

(m) That thereafter, on the 30th day of December, 1930, the Corporation Commission entered its order 5413, extending and modifying order No. 5369 (both a part of plaintiff's Exhibit No. 33, Rec., p. 281), and among other things found:

"* * * * * * *

[fol. 148] "(d) The Commission further finds from the evidence that, in addition to the excess of potential and actual production and imports over current demand, there are stocks of petroleum on hand in the United States aggregating more than 670,000,000 barrels, which stocks are excessive and beyond the needs of the petroleum industry. That by reason of the excessive supply thus indicated, the purchasers of crude oil in Oklahoma are unwilling to purchase crude oil in Oklahoma for storage purposes in any amount that would be adequate to take care of the surplus of potential production over current demand and that, therefore, there is not sufficient empty tankage available to take care of said excess and unless production in Oklahoma is curtailed, much oil would necessarily go to earthen storage where it would evaporate and escape and thus be wasted." (Page 2 of order.)

And thereupon the following allocations of production were made for the months of January, February and March, 1931:

	Estimated potential	Maximum potential demand	Estimated probable demand
January:			
Class A	247,000	217,000	175,905
Oklahoma City	5,338,298	85,000	85,000
Outside	616,921	204,095	204,095
Total State	6,252,219	506,095	465,000
February:			
Class A	243,295	213,615	176,175
Oklahoma City	5,838,804	90,000	90,000
Outside	604,465	202,825	202,825
Total State	6,686,564	506,440	469,000
[fol. 149] March:			
Class A	239,646	210,646	180,636
Oklahoma City	6,411,459	90,000	90,000
Outside	611,972	199,364	199,364
Total State	7,263,077	500,010	470,000

Page 4 of order.)

* * * * * * *

"(6) * * * The Commission finds that the varying percentages of curtailment as between pools as set forth in paragraph (f) of this order are necessary, fair and reasonable because of the peculiar conditions in each case and in this, to-wit: that said pools are not all served in common by the same pipelines and purchasers; that the reasonable market demand from certain of them is greater in proportion to potential production than in the case of others; that some of them are older than others and have been prorated longer than others, under orders of the Corporation Commission, with a consequent greatter reduction in potential flow and smaller possible production per well per day and are, therefore, accorded a higher percentage allowable production; that in many cases individual pools are served by local purchasers whose facilities cannot be extended to the others, and in certain of the pools the sand and water condi-

tions prevent as great curtailment as is possible in others, and that in certain pools there is a more in[illegible]nsive drilling campaign and wells of larger capacity than in others. The Commission also finds that in the making of said schedule in paragraph (f) the producers and purchasers in all of said pools were consulted and meetings of said producers and purchasers were held at which all of the foregoing factors were considered and that said schedule represents the consensus of opinion of said producers and purchasers as to [fol. 150] reasonableness of arrangement, necessity and convenience of producers and purchasers and equity as between the various common sources of supply under present circumstances." (Pages 6 and 7 of order.)

* * * * * * *

"(k) The Commission finds that the full potential production from the Oklahoma City pool cannot be produced without waste, including physical waste and waste incident to the production of crude oil or petroleum in excess of the reasonable market demand, and that the reasonable market demand from said pool at the present time, and during January, 1931, is and will be approximately 85,000 barrels per day, and that in the month of February, 1931, said reasonable market demand from said pool will be approximately 90,000 barrels per day and that in the month of March, 1931, the reasonable market demand from said pool will be 90,000 barrels per day and that the market demand herein named is subject to increase and the Commission therefore finds that the orders, rules and regulations should be made sufficiently flexible so that increases or decreases in market demand from said Oklahoma City pool and increases or decreases in potential production therefrom, can be recognized by ancillary orders of the Commission, and that for this purpose the umpire and Operators' Committee should be instructed to compute from time to time, the rate of curtailment necessary in order to conform the permitted production to the reasonable market demand from the said Oklahoma City pool and to report the same to the Commission with the facts in support thereof as a basis for such ancillary order; it being understood, however, that whatever reasonable market demand develops for crude oil from the Oklahoma City pool shall be prorated among all the producing wells therein, so that each well or lease will be permitted to

produce its proportionate share of the amount of oil that may be produced from said field without waste." . . . (Page 8 of order.)

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[fol. 151] "The Oklahoma City operators have petitioned this Commission for permission to change the method of proration in said pool from the time basis to the basis of percentage of daily potential production and this Commission's rules and regulations with reference thereto are embodied in a separate supplemental order this day issued. Proration of the Oklahoma City pool has heretofore been on the time basis because the operators requested it and because there was no practicable way of taking accurate gauges as a basis for proration by the percentage of potential method, there being no facilities for handling the oil that would be produced while the gauge was being taken. But the Commission now finds that a reasonably accurate gauge of potential production may now be taken and that under the circumstances as they now exist percentage proration would be better for the field in regard to reducing the possibility of waste" (page 9 of order).

"It is therefore ordered, . . .

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"Where percentage proration is applied a gauge of producing wells shall be taken in the following manner: The gauge to determine potential shall be taken by each operator in the pool in respect of the lease or leases owned by him therein and then producing, such gauge to be taken between the hours of seven A. M. on the day set by the order of the Commission, and seven A. M. on the following day. Prior to the taking of such gauge and in respect of each producing lease covered hereby the umpire shall appoint a representative of an operator owning a lease adjoining the particular property to be gauged, and shall notify the operator whose property is to be gauged of the name of the representative, such notification to be given prior to the taking of such gauge. It shall be the positive duty of such representative to remain on the lease that is being gauged throughout the entire day that the

gauge is being taken to witness the gauging of the production therefrom; and immediately upon the completion [fol. 152] of such gauge, such witness and the operator whose property was gauged shall file a written statement with the umpire showing the production of said lease, and of each well thereon for the day said gauge is taken. The production so shown shall constitute the potential for said lease until the next gauge is taken. During the time this order is in force a similar gauge of each property shall be taken from time to time as the umpire and Operators' Committee may designate but not less than once each month. Such open gauges shall be taken in the following pools: Wewoka (Section 30 and Townsite), East Earlsboro, South Earlsboro, Section 29-9-6 (West Seminole), the flush wells in the Carr City pool located in Sections 2 and 3, Twp. 8, Range 5, and the flush wells in the Tatums pool.

"On the basis of open gauges heretofore taken in East Little River, Konawa, West Asher-Wanette, Earlsboro Townsite and Sasakwa, the potential production shall be declined 5% per month until further order of the Commission. On the basis of gauges already taken of the Wilcox sand wells of the Allen pool, the potential shall be declined 3% each month, with the exception of the Sinclair-Cully 'A' Lease, Blackwell Fleet lease and the Texas-Lewis lease, which shall be declined 5% per month, and the Texas-Dinah lease, which shall be declined 10% per month; all other wells in the pools of the Greater Seminole area shall be declined 3% a month" (pages 10 and 11 of order).

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"That all purchasers and pipeline carriers of oil in the State of Oklahoma be and they are hereby forbidden to aid or abet producers in violating this order" (page 11 of order).

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"Class H Pools.—The Oklahoma City pool. The Cor- [fol. 153] poration Commission temporarily nominates for

the Oklahoma City pool an outlet of 85,000 barrels per day in January, 1931, 90,000 barrels per day in February and 90,000 barrels per day in March. This nomination of the total permitted production of the pool shall serve as a basis for fixing the proportional production of the wells in said pool until the Commission finds from evidence that a greater or less reasonable market demand obtains. On the basis of the potential production of the field now reported to the Commission of 5,388,298 barrels per day, the temporarily nominated outlet of 85,000 barrels per day will require a proportional taking of 1½% from the potential production of each well or lease. This percentage shall be put in effect at 7 A. M., January 3, 1931, but the umpire and Operators' Committee are directed to immediately begin the taking of gauges in said field according to the supplemental order this day issued and to compute the percentage of allowable from time to time as found necessary to conform the permitted production to the reasonable market demand, and to report as soon as possible their findings to the Commission as a basis for an ancillary order revising such permitted percentage. Any person interested in said pool may also report to the Commission any evidence of the need for a changed percentage. All orders heretofore issued applicable to the Oklahoma City pool, and now in force and effect, are hereby extended in full force and effect until 7:00 A. M. January 3, 1931. From and after said date and hour the percentage of allowable production herein fixed for the Oklahoma City pool shall be applied according to and as modified by order No. 5413 this day issued which applies to the Oklahoma City pool alone" (pages 13 and 14 of order).

And,

(n) Thereafter, on December 30th, 1930, the Corporation Commission of the State of Oklahoma, entered its Order 5414 (plaintiff's Exhibit No. 33; Rec., p. 281), and among other things therein found:

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[fol. 154] "(c) That conditions which have heretofore prevailed rendering it inexpedient to apply the percentage

proration plan to the Oklahoma City pool, particularly lack of facilities to make a proper gauge of potential for the application of percentage proration, have now become sufficiently modified that a reasonable percentage plan of proration can be applied.

(4) That under the proration plan now in operation in the Oklahoma City pool, the basis upon which the time of opening and closing the wells has been a fixed number of hours in each 12-day period. The present period will come to an end at 7:00 A. M., January 3, 1930, and for the efficient operation of the plan this order should become effective as of that date and hour" (pages 1 and 2 of order),

and in subdivisions 1 and 6, inclusive, of said order, made the following findings of method of taking potentials upon percentage basis:

"From and after 7 o'clock A. M., January 3, 1931, and until otherwise ordered by the Corporation Commission, such ratable production of oil from the Oklahoma City pool and such proration among the wells in said pool of the reasonable market outlet for said pool as may from time to time be ordered by the Corporation Commission, shall be applied in accordance with the following plan, to-wit:

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"(1) The period commencing at 7 o'clock A. M., January 3, 1931, and ending at 7 o'clock A. M. on the first day of April, 1931, shall constitute the first potential period, and each three consecutive calendar months thereafter, commencing at 7 o'clock A. M. on the first day of the first month of said three months' period and ending at 7 o'clock A. M. on the day following the last day of the third month shall constitute a potential period.

[fol. 155] "(2) As to each well in the pool, the first potential determined during any potential period shall constitute its tentative potential for that period, and based on such tentative potential and the percentages of potential which the Corporation Commission allows to be produced from time to time during such potential period, the tentative allowable production of each well during such potential period shall be determined in the manner hereinafter

provided, and, except as hereinafter otherwise provided, each well in the pool shall, during such potential period, be permitted to produce its tentative allowable production for such period so determined.

"(3) As to each well in the pool, except as hereinafter otherwise provided, the corrected potential for each potential period shall be the average of the tentative potentials so determined for that and the next succeeding potential period, to be determined as soon as the tentative potential for such succeeding period has been determined, and based on such corrected potential and the percentages of potential which the Corporation Commission allowed to be produced from time to time during the potential period to which same is applied, the corrected allowable production for such potential period shall be determined, and the amount by which the actual production of any well during any potential period exceeded or was less than the corrected allowable for such potential period shall be carried over into the next potential period as a charge or credit against or in favor of said well, as the case may be.

"(4) In the event during any potential period any well, subsequent to the determination of its tentative potential for such period, is shot, cleaned out, deepened, tubed, put on air-gas lift, or plugged back in such manner as, in the opinion of the operator or of the umpire, to materially affect its potential as determined in the next succeeding potential period, then the corrected potential of such well for said current potential period shall be agreed on by the [fol. 156] operator of such well, the umpire and the majority of the Operator's Committee, and in the event they are unable to so agree, the umpire shall immediately refer the matter to the Corporation Commission for determination, and pending final determination by the Corporation Commission, the corrected potential of such well for such current potential period shall be that fixed by the umpire and a majority of the Operator's Committee.

"(5) The tentative allowable production and corrected allowable production of each well in the pool for any potential period shall be that determined as hereinabove provided, plus or minus, as the case may be, any credits or charges in favor of or against said well carried over from the preceding potential period.

"(1) At 7 o'clock A. M. on the first day of each potential period, each well in the pool shall, except as hereinafter otherwise provided, be completely shut in, and remain shut in until opened for the purpose of having its tentative potential determined in accordance herewith, provided, that notices as hereinafter prescribed, with respect to time of taking such potentials on the first day of any potential period, may be filed with the umpire on or before 12 o'clock noon of the preceding day.

"(2) Before any well in the pool is opened for the purpose of having its potential determined, the owner or operator thereof shall file with the umpire at his office in Oklahoma City, on or before 12 o'clock noon of the day preceding the day on which such well is to be opened for such purpose, a written notice giving the name and address of the operator in charge of said well, the name of the operator's representative who will witness the test of said well, the name and location of the lease on which the well to be tested is located, the serial number of said well on the lease, and the hour, not earlier than 8 o'clock A. M. nor later than 1 o'clock P. M., at which the well will be opened for such purpose. Such notices shall remain on file in the office [fol. 157] of the umpire, and be subject to inspection by any producer in the pool, and it shall be the duty of the umpire to maintain available for such inspection in his office from 1 o'clock to 5 o'clock each afternoon a list of all wells which are to be tested during the succeeding day.

"(3) When, in pursuance hereof, a well is permitted to be opened for the purpose of determining its potential, it shall be permitted to produce for four hours to be taken continuously, whether or not the well produces continuously during such time, and to be computed from the hour and minute oil first flows into lease tankage from the oil and gas separator. The amount of oil produced from said well during said four-hour period multiplied by six shall constitute the tentative daily potential of said well for the current potential period.

"(4) For the purpose of determining the amount of oil produced during said four-hour test period the oil produced during the period is to be gauged in lease tankage

which has been strapped in accordance with the usual and customary practice prevailing in the Oklahoma City field, and the amount of oil produced shall be calculated on the basis of ninety-seven per cent tank tables. The usual and customary tests and deductions shall be made for water and B. S. content, and the oil shall be gauged only after it has stood in lease tankage for a period of at least one hour.

"(5) The potential of each well in the pool is to be determined as soon as practical after seven o'clock A. M. on the first day of each potential period, provided, wells which on the 3rd day of January, 1931, are over-produced under time proration are to remain shut in until they are even, and wells which on the first day of any potential period have not served their shut in time and time charged against them account initial test, as provided by orders of the Corporation Commission, shall remain shut in until they have served such shut in time and time charged against them.

[fol. 158] "(6) The Umpire shall appoint a representative of an operator who is in no way interested in the well to be tested to be present and witness the test being made of each well, and it shall be the duty of the representative so appointed by the umpire to remain at the well which is being tested during the entire time the same is being produced for the purpose of determining its potential, and to witness all operations, tests for B. S. and/or water content, measurements and/or calculations made for the purpose of determining the actual production of oil made by the well being tested during the test period as above defined. Immediately upon the completion of such test, the representative appointed by the umpire and the representative of the operator shall file with the Corporation Commission, and a copy thereof with the umpire, a written statement duly verified by both representatives on form to be approved by the Corporation Commission, showing the amount of oil produced by said well during the test period as above defined.

"(7) In the event the umpire's representative, and well owner's representative at the testing of the well, are agreed as to the daily potential of the well as determined by the test, the operator may continue forthwith to produce said

well until there has been produced therefrom, including the amount produced during the test, the total allowable, to be calculated as hereinafter provided, for the current month. In the event the representatives of the umpire and the well owner are not agreed as to the daily potential of any well, the well shall be shut in at the close of the test, and the matter referred to the umpire. If the umpire and the operators agree as to the daily potential of the well, the operators shall, thereupon, be permitted to produce the well until it has produced, including the amount produced during the test, its tentative allowable for the current month based upon the potential so agreed upon. If the well owner and umpire are unable to agree as to the daily potential of any well, the matter shall be referred to the Corporation Commission for determination, and, pend-
[fol. 159] ing final determination by the Commission, the operator shall be permitted to produce the well until, on the basis above outlined, it has produced a tentative allowable for the current month calculated on the basis of the daily potential as fixed by the umpire.

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"(1) The tentative allowable production of any well for the remainder of the month of January, 1931, from seven o'clock A. M. on January 3rd, to seven o'clock A. M. on February 1, 1931, and for each month thereafter, shall be determined, (a) for the remainder of the month of January, by multiplying its tentative potential for said month by the percent of allowable production as fixed by the Corporation Commission for that month, and the product by 29, and (b) for each month thereafter, by multiplying its tentative potential for said month by the percent of allowable production for that month as fixed by the Corporation Commission, and the product by the number of days in the month, and by adding to or subtracting from the product so obtained all credits or charges, as the case may be, carried over from the preceding month and/or potential period, provided, the tentative allowable production of wells, which on the 3rd day of January, 1931, or on the first day of any subsequent potential period are shut in account being over-produced under time proration or account not having served their shut in time and time charged against them account initial test, as prescribed by orders

of the Corporation Commission, for the remainder of the month in which they, respectively, become even or complete their shut in time and time charged against them account initial test, shall be determined by multiplying their tentative potential last determined by the percent of allowable production for that month as fixed by the Corporation Commission, and the product by the number of days in such month subsequent to the day and hour on which such wells, respectively, became even or completed their shut in time and time charged against them account initial test.

[fol. 160] "(2) The umpire shall advise each operator each month by written notice the tentative allowable production for such month of each well being operated by such operator, such notice to be given for the month of January, 1931, on, or as soon as practical after the third day of said month, and for each month thereafter, on, or as soon as practical after the first day of said month, and no operator shall produce from any well in the pool during any month a greater amount of oil than its tentative allowable production for that month determined as herein provided.

"(3) The under-produced time of wells which on January 3, 1931, are under-produced on time proration, shall be converted into barrels of oil on the basis of the tentative potentials of said wells respectively, for the first potential period and the amount in barrels of oil of the under-production of each said well so arrived at shall be credited to it as underage as of 7 o'clock A. M. on the third day of January, 1931.

4

"(1) Each operator shall each day furnish to the Corporation Commission on forms to be prescribed by the Commission, written statements sworn to by an authorized representative of the operator, showing for the preceding day the name and address of the operator, the name and location of the lease on which are located either oil or gas wells, and, as to each well on each lease, the tentative allowable production for the current month, determined as herein provided, the overage or shortage from the preceding month, the net tentative allowable production for the current month, the production on the day for which the report is made, the balance remaining of tentative allowable

production for the current month, and as to each lease, the amount of oil shipped by pipe line and by tank car with the name of the pipe line and/or railway company transporting same, as the case may be, and the name and address of the purchaser of oil so shipped.

[fol. 161] "(2) Each operator shall also file with the Corporation Commission each day, on forms to be prescribed by the Commission, sworn statement showing for the preceding day the total amount of gas produced from each well which has been classified by the Corporation Commission as a gas well, the disposition made of the gas produced therefrom, the amount of hydro-carbon liquid produced therefrom, and the disposition made of such liquid.

"(3) Where gas wells which produced hydro-carbon liquid are located on the same lease on which are located oil wells, the gas wells producing such liquid shall not be permitted to produce into the same tanks or into tanks in any way connected with the same tanks into which oil wells are producing. In the event the liquid production from gas wells located on a lease on which are also located one or more oil wells, is disposed of as pipe line oil, the amount of oil produced by gas wells on any such lease during any month shall be deducted from the allowable production for said month of the oil wells located on the same lease, such deduction to tbe made from the allowable production of each such oil well in proportion to its potential determined as hereinabove provided.

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"(1) Before testing any wells for potential during the month of January, 1931, and within five days after the end of each month thereafter, each operator shall file with the Corporation Commission on forms approved by the Commission, a sworn statement with respect to each lease, showing the name and address of the operator thereof, the name and location of the lease, a list of the lease tanks on the lease showing pipe line numbers of each tank, a list of all tanks used as lease tanks off the lease, showing the location, pipe line company numbers thereof, and the amount of oil in each tank as of 7 o'clock A. M. on the 3rd day of January, 1931, and as of 7 o'clock A. M. on the first day of each month thereafter.

[fol. 162] "(2) The umpire shall forward to each producer each month a statement showing as to each oil well in the field its potential, its tentative allowable for the preceding month, any overage or underage as of the first day of the preceding month, its net tentative allowable for the preceding month, its actual production during the preceding month, and its overage or underage, if any, as of 7 o'clock A. M. of the first day of the current month, and showing as to each lease the stock of oil on hand as of 7 o'clock A. M. the first day of the preceding month, the total production during the preceding month, the total shipments during the preceding month by pipe lines and tank cars, showing the amount shipped by each, and stocks on hand as of 7 o'clock A. M. the first day of the current month.

"(3) Copies of all reports herein provided to be furnished to the Corporation Commission shall at the same time be furnished the umpire at his office in Oklahoma City.

"(4) Any person, firm or corporation transporting crude oil from the Oklahoma City field shall file with the Corporation Commission each month, on or before the tenth day of the month, a statement in duplicate showing the number of barrels of crude oil run from each lease in the field during the preceding month, and each railroad company which transports crude oil by tank car from Oklahoma City shall each month file with the Corporation Commission a statement in duplicate showing as to each shipment of oil from Oklahoma City, the name of the shipper, the name of the consignee, the destination of the shipment, the number of cars shipped showing the serial number of each car and the weight of the shipment.

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"It is hereby made the specific and mandatory duty of the umpire to report any violations of this order to the Corporation Commission."

(o) Thereafter on the 10th day of February, 1931, the Corporation Commission entered its order No. 5437 (plain- [fol. 163] tiff's Exhibit No. 33, Rec., p. 281) and among other things therein found:

"The issues herein are relatively simple because the parties agree that for the purpose of this hearing and investigation, proration and equitable taking are recognized as valid and that the laws with reference thereto are not herein under attack, having been passed upon by the Supreme Court of this state in the case of Julian Oil & Royalties Co. v. Capshaw, et al., 292 Pac. 841; and in the District Court of the United States for the Western District of Oklahoma in Champlin Refining Company v. Corporation Commission, et al., No. 1156, and related cases. The courts have held that proration and equitable taking are valid, under the Oklahoma law.

"The only question at issue herein, aside from that of waste which is always present in any hearing of this character, is, shall the allowable and ratable takings from the Oklahoma City field be increased and, if so, how much. The answer to that question is dependent upon the market demand, a thing wholly elusive and most difficult, if not impossible, of determination."

* * * * * * *

"The testimony seems to have been very largely determined by the particular interest of the parties themselves. Nor have some of these parties been altogether consistent in their attitude toward proration; thus those desiring immediate opportunity to market an increased amount of crude petroleum generally favor an increase in alowable takings under proration, whereas those more anxious to preserve the market stability and to protect interest elsewhere, generally favor the maintenance of the present percentage of allowable takings from the Oklahoma City field, and the least possible market competition. Some of the producers whose interest are chiefly in the Oklahoma City field, however, stand squarely on the present policy of proration and suggest the limiting of takings to the actual visible market capacity, and that, of course, [fol. 164] on a ratable basis, contending that having relied on the policy of proration and the practice of proration in the Oklahoma City field, they have made no effort to provide an immediate*ly* or approximate provision for the taking care of increased runs.

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"The Oklahoma City field has been prorated until its production has been reduced to the minimum, now approximately 30,000 barrels. Some of the chief producers in this field have made little or no attempt to market their crude petroleum, hoping for a day when the production generally would have so declined or have been so taken care of as to bring about a greater or more advantageous market for the Oklahoma City field.

"Nor have they made any provision for storage, in case proration should be lifted, or so increased as to throw tremendous quantities of crude petroleum from the field on the market at once. Therefore, the state, having developed this condition and having brought about this situation, is in duty bound to use its best efforts to protect the people thus affected and thus relying upon its protection. The Corporation Commission having thus far followed the policy, and the state and its people having relied thereon, could not, it appears, in good conscience, deliberately and precipitately abandon its former policy and right about face without giving persons thus relying upon this kind of protection some opportunity to look out for the future."

. . . . . .

"The applicants contend that any permissible amount of crude petroleum may be taken from the Oklahoma City wells and the Oklahoma City field without waste, either physical or economic. This the opponents of the application deny.

"Let us consider first, the question of physical waste. There is on this question, some argument and some disagreement between applicants and protestants. Wirt [fol. 165] Franklin testified that physical waste is now taking place in the Oklahoma City field through improperly cased wells which permit water to seep into the strata, or sands, thereby drowning out or driving back the oil, and through escaping or transmission of natural gas from its natural stratum into the stratum or sand containing the crude pertroleum and vice versa. This unnatural or improper transmission of natural gas from a gas stratum to an oil stratum and of oil from an oil stratum to a gas stratum could be and probably is productive of tremendous

underground waste, the oil being absorbed in the dry gas sand and the gas going into a sand where it is not presently needed for the production of oil and retarding rather than aiding the oil recovery. Similar testimony of similar instances of waste was offered on behalf of other parties to the proceedings and by some of the witnesses for the protestants.

"All parties agree that this underground waste should be stopped through proper care of the wells; in some instances, perhaps, by plugging back and cementing and in others, by introducing additional string or strings of casing and cementing. But whatever the process or the cost, the necessities of the field demand the cessation of underground wastage and the protection of the wells against its recurrence."

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"Economic waste, so far as this hearing is concerned, is too closely allied to physical waste to permit intelligent severance therefrom."

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"To that feature of economic waste wrapped up wholly in the question of price fixing, we shall not advert for the reason that both the state and the federal courts and the parties presenting the proceedings involving proration, have assumed, apparently, that the provision of the laws relating to price fixing are invalid, and that the Corporation Commission is without authority to sit as a price [fol. 166] fixing agency in the determination of the issues. The price of crude petroleum, however, is inseparably related to the question of economic waste. It is the demand for crude petroleum at a price which will permit the operation of wells which keeps men employed and wells operating. Without both a market demand and a price which will pay expenses, wells cannot be kept going or petroleum pumping through the pipe lines, to the trade. Therefore, much of the testimony touching upon economic waste, had to do with the price which might be maintained in the Oklahoma City field and which might reflect itself to the other wells in the state, and in determining whether or not they would be kept in operation.

"Another element of physical waste, not present, but contemplated or threatened, is that of earthen storage. Witnesses indicated that if an allowable taking is permitted far in excess of either the demand of the market or the ability of the market to absorb, operators who do not have access to pipe lines as advantageously as their neighbors and who are not provided with steel storage, will attempt to place oil in earthen storage. With this argument, we are not greatly impressed. It harks back to the days of the Cushing and Healdton fields, when the state had neither a conservation law nor a conservation policy. Earthen storage is now forbidden in any field in Oklahoma both by statute and by specific orders of this Commission. Earthern storage cannot be had except it be accompanied by physical waste as well as untold hazards in a field thus proximate to a great city. Our orders specifically prohibit the allowing of oil 'to leak or escape from natural reservoirs, wells, tanks, containers, or pipes.' (See rule 12 of this Commission's order No. 1299.) We think, however, in this connection, inasmuch as the question has been raised that we should give specific notice that earthen storage cannot either be used or tolerated in the Oklahoma City field.

"Another and an exceedingly important problem, directly connected with the question of physical waste but [fol. 167] also bearing upon the question of economic waste and the ultimate recovery of the field, is the question of natural gas wastage in connection with the production of crude petroleum. A witness, a competent petroleum engineer, testified that if the wells in the Oklahoma City field were opened to 10 per cent capacity daily flow, assumably based upon the Commission's estimated potential in its Order No. 5413, of near 6,000,000 barrels, there would be a production in the Oklahoma City field of approximately one and one-half billion cubic feet of natural gas, the greater portion of which would be blown into the air and dissipated.

"Involved in this wastage of natural gas to an extent which to the layman's mind seems criminal and which to any mind ought to be conceded to be improvident, is the question of the destruction of gas energy. The potent and necessary element, or power, is the recovery of crude petroleum. Oklahoma City wells are exceedingly deep,

generally producing crude petroleum from a depth below 6500 feet, and the gas energy so necessary for their production, once dissipated, cannot be restored. The relationship of wastage of natural gas from these wells and the allowable takings of crude petoleum from the wells is an important and a necessary one. We should not permit unlimited flow from these wells until we can be convinced that the natural gas energy is being conserved to the best advantage.

"Mr. J. R. McWilliams, a competent petroleum engineer, employed by the Skelly Oil Company, called as a witness by counsel for the applicants, Jones Bros., et al., testified that the gas ratio in the production of oil, through pinching in of the wells and through mechanical devices, could be kept down as low as 800 to 1500 cubic feet of natural gas per barrel of oil and generally not to exceed 2000 cubic feet per barrel of oil produced. Another petroleum engineer testified that 3000 cubic feet of natural gas was the maximum required for producing a barrel of crude oil. There is no evidence that any reasonable amount of study, [fol. 168] care or caution has been given by operators generally in the Oklahoma City field to the conservation of this natural gas energy or the prevention of waste of natural gas in connection with the production of crude petroleum. We should have jurisdiction to prevent such waste and to require the preservation of such energy. If there is any weakness in the law in this respect it should be amended. We ought not to be compelled to assume any such weakness for the purpose of this administrative legislation. These facts and these circumstances indicate a cause for failure to permit unlimited taking of crude petroleum from the wells in the Oklahoma City field, aside from the admitted validity of the present laws and regulations, and the assumed wastage if unlimited production of crude petroleum were permitted."

. . . . . .

"Out of this dilemma, the only practicable or feasible solution seems to be, admitting proration and equitable taking, an allowance of takings sufficient to absorb the market offered. The situation calling for relief is not based altogether on logic but is one requiring, under the

law, the protection of all the producers of the common source of supply, and presumably, the public.

"Certain it is that the great and ultimate object of the conservation laws was the protection of the public, and by the public we mean the State of Oklahoma and its people. It was the little and so-called independent producers who came to the legislature and to the Corporation Commission in 1914 and 1915, for protection. It was said that the big and the powerful interests were crushing out the small and the independent producer through taking oil from their own wells, thereby draining his properties while refusing to buy any of his production.

"Now it seems to be chiefly the distressed producers who are seeking the widening of proration, for the reason that they have accumulated obligations which can only be met through turning some of the oil from their wells into cash. [fol. 169] This is not altogether true for the reason that the Sinclair Company, one of the largest producers in the field, is unalterably opposed to the policy thus far pursued by the Corporation Commission.

"Who would be helped and who would be injured by the turning loose of production in the Oklahoma City field, beyond any reasonable ability of the market to absorb, is problematical, but, as always, the weaker would probably suffer first and the persons who are now most earnest and insistent in the requests for increasing, or lifting of proration, could not hope to escape the effects, of the probabilities of being the first to suffer, and, likely, the ones to meet the most disaster.

"As to the market demands and the effect of increasing the allowable takings, there is a constant conflict of testimony; the applicants contend that increasing the allowable takings would increase the market. The protestants, on the other hand, are of the opinion, generally, that any increasing of the allowable takings would not increase the market demand, and, some of them insist that an unreasonable increase of the allowable takings in the Oklahoma City field would be accompanied by withdrawals, to a certain extent, at least, from the market by some of the major pipe lines now taking oil. We cannot say that this is a threat because the witnesses, testifying under oath, must be assumed to have been giving their convictions as to the probable effect and result.

"The applicants, on the other hand, contend that there is a demand for Oklahoma City oil. They introduced a number of witnesses who testified that they can sell oil if they can produce it; that they have contracts for a determinate and for an indeterminate amount of crude petroleum if it can be gotten, and at a price satisfactory to themselves. This testimony, in the very nature of things, must necessarily be of a very unsatisfactory character. Witnesses testified that they could not divulge buyer's names because of the possibility of losing sales thereby. Some of this testimony was put on by brokers who testified to indefinite [fol. 170] demands for crude petroleum saying that certain persons had inquired of the ability to buy definite quantities of crude petroleum in the Oklahoma City field but did not push these inquiries when advised of the low allowable takings and of the fact that their offers probably could not be absorbed at the price quoted. All in all, and possibly in the very nature of things it must be so, the preferred markets of the applicants and their supporters, are, in the words of the protestants, largely 'nebulous.' At any rate, they are indefinite and offer no basis on which we can predicate a definite finding.

"The testimony, however, does indicate that the applicants and some of their supporters could and would market and take an increased amount of crude petroleum, and in addition to that which would be taken by the major pipe lines if the allowable takings were materially increased. In other words, we think that the applicants, while not making a conclusive case, have made one which indicates that some relief should be granted. Again, how much, is the question.

"The Oklahoma City field, the evidence indicates, is being discriminated against. It is our duty, if possible, to give those who have oil to sell, an apportunity to dispose of it, through so regulating proration as not to shut off the markets offered.

"The evidence indicates that there has been a steady and gradual decline in the production and sale of Oklahoma crude petroleum, notwithstanding proration. The opponents of the present policies of proration ascribe this falling off in the market to the rules and regulations of this Commission, claiming that if there had been no proration the heavy and increased production of Oklahoma oils would

have caused Oklahoma to continue to lead the other states of the Union in the production of crude petroleum. This partly begs the question for the reason that proration and equitable taking for the purposes of this hearing is admitted. Nevertheless the record does show that there has [fol. 171] been a decline of Oklahoma production during the past three years of over 250,000 barrels, and a retrogression of Oklahoma from first to third place among the crude petroleum producing states of the Nation, and a falling off of the gross production tax to the state of more than three million dollars per year. How much of this is incident to the general depression which has swept the country and how much to something else, it is difficult to say. Certainly all the ills have not been due to proration and we cannot say that conditions would not have been worse had there been no proration, for having been pioneered here proration has spread to Texas and California, though it has not been in use elsewhere except by voluntary action of operators in certain places, as in the Kansas fields."

* * * * * * *

"There were indications at the hearings of favoritism and of discrimination against certain operators. Without evidence thereon these must be considered fancied rather than real. We cannot assume that the umpire is not doing his duty to the very best of his ability. Nor do we have any evidence that he is not thus attempting to do his duty. But we do recognize that an unhealthy condition, or situation, exists in the Oklahoma City field. The umpire is nominated by the producers, or operators.

"Certain operators have not felt warranted in cooperating therein. There is no law compelling them to do so. There ought to be some way, which the operators generally could suggest of direct representation, in the umpiring for these persons who are suspicious of what is now being done. If this could be brought about it would go a long way toward relieving the tension in the Oklahoma City field.

"The Corporation Commission is not equipped to police the Oklahoma City field, let alone all the fields of the state. It has certain conservation agents whose duty it is to look out for and prevent violation of physical waste. The law probably never contemplated that we should attempt, with [fol. 172] these few agents, to police takings from any pool

where there might be a potential production far in excess of any market demand. If the state intends that we should, it must make provision therefor by law. There are now, in the Oklahoma City field, something like 680 oil wells. In fairness to the operators it must be said that they generally manifest a willingness, voluntarily, to observe this Commission's findings and orders relative to proration and equitable taking. Without such attitude, enforcement of proration or equitable taking, would be a physical impossibility, under the present machinery, in a field of this size, not to mention the other fields in the state.

* * * * * * *

"We come now to a determination of the figure to be used in the allowable takings. This we cannot arrive at with any mathematical accuracy; it must be purely an estimate; it must be largely a guess; it must hang on the ability of the market to absorb but must not be contingent upon any collusion among operators to discriminate against the Oklahoma City field. The applicants are basing their application for percentage increase in takings from the Oklahoma City field on the finding of this Commission's order No. 5413, supra, as to the Oklahoma City potential, which the Commission estimated for February, 1931, at 5,838,804 barrels. The umpire in the Oklahoma City field now estimates the potential of this field at 6,254,964 barrels per day but gives the actual at not in excess of 3,000,000 per day in his testimony herein.

"The testimony in the record indicates that this potential is altogether too high and that it is based on a 4-hour test of each well, made when the other wells were closed. It is contended that any reasonable estimate of the potential of this field must be based on at least a 24-hour test, with all the wells producing at once. That, of course, is a physical impossibility because of the inability to find storage for any such test. A real test, which is altogether out of the question, would be a full production of the wells over a period [fol. 173] of say, some thirty days. Various opinions from competent engineers and experts, were given as to the actual production of the Oklahoma City field; these range as high as three and one-half million barrels approximately to as low as around one million barrels. The Commission should find, under the evidence, that the actual production

of the Oklahoma City field would be not to exceed from two million to two and one-half million barrels per day. A 5 per cent allowance on such a potential would be a maximum of 125,000 barrels.

"Wherefore, premises considered, and the Commission being advised, it is therefore ordered:

"1. That orders Nos. 5413 and 5414 made and entered on December 30, 1930, be and the same are hereby modified and supplemented insofar as they affect what is known as the Oklahoma City oil field, and that the potential production of said field be and the same is hereby determined to be approximately 2,000,000 barrels of crude oil per day.

"2. That the amount of allowable production from said Oklahoma City field be and the same is hereby increased from the allowable heretofore determined, to 125,000 barrels per day, or 6¼ per cent of the potential production of 2,000,000 barrels per day as herein determined.

"3. That each person, firm or corporation having the right to drill into and produce oil from the Oklahoma City oil field, may take from such pool, or area, or extensions thereof, 6¼ per cent of the potential production of the wells owned and operated by any such person, firm or corporation, and each person, firm or corporation having such right to drill into and produce oil from said pool be and they are hereby required to produce said percentage in such a way as not to constitute waste, and in such a way as not to constitute an unreasonable waste of natural gas or natural gas energy.

[fol. 174] "4. That the owners and operators of oil and gas property in what is known as the Oklahoma City oil field, be and they are hereby prohibited from storing crude oil in said field in earth storage tanks or other storage facilities which permit leakage of oils in a wasteful manner.

"5. That in estimating the allowable run from each well in the Oklahoma City field on the basis of 125,000 barrels for said field as herein determined, the true gauge shall be one-third of the estimated production on the basis of the four-hour gauge, multiplied by 6, and each owner and operator of any well or lease in said field shall be permitted 6¼ per cent of the potential production arrived at and determined by this method.

"6. That jurisdiction of the subject-matter and parties herein be and the same is hereby retained for the purpose of making ancillary or supplemental orders hereto, and March 2nd, 1931, be and the same is hereby set as the date for the presentation of any additional testimany of any interested party with respect to the matters and things here involved, and particularly as to any changed condition with respect to the market demand for crude oil or petroleum produced in said field.

"7. That the pipe line companies and common carriers of crude oil and petroleum from the Oklahoma City oil fields, be and they are hereby ordered and directed to cooperate to the fullest extent with the producers in said field, and shall take such inereased quantities of crude oil or petroleum from said field as may be produced, without waste, under the terms and provisions of this order.

"8. That the terms and provisions of order No. 5413, and other orders heretofore made and entered, and now in effect, except as modified herein, shall remain in full force and effect.

"9. This order to be in full force and effect from and after the date of its promulgation and until further order of the Commission."

[fol. 175] (p) That thereafter on February 26th, 1931, the Corporation Commission entered its order No. 5444, (plaintiff's Exhibit No. 33, Rec., p. 281) as follows:

"Now, on this 26th day of February, 1931, the Commission having under consideration the application of Cicero Murray and Roy M. Johnson, who have been appointed as a Committee by Governor Wm. H. Murray to investigate the methods of prorating oil in the Oklahoma fields, said Committee having on February 24th, 1931, in writing, requested this Commission for an order making a potential test of the Seminole oil fields.

"It is therefore the order of the Commission, premises considered, that the said test be made for a period of ten (10) days, beginning March 5th, and that the following pools are included in this order:

East Earlsboro, Searight, Maud, Mission, Carr City, South Earlsboro, Little River, East Little River, Allen,

Seminole, East Seminole, Bowlegs, St. Louis, Earlsboro, Earlsboro Townsite, and Sasakwa.

"It is the further order of this Commission that said gauges be taken under the rules and regulations set out in the orders of this Commission now in effect in said fields.

"Done at Oklahoma City, Oklahoma, the 26th day of February, 1931."

(q) Thereafter, on June 27th, 1931, the Corporation Commission entered its order No. 5448 (plaintiff's Exhibit No. 35, Rec., p. 282), and among other things found:

"That order No. 5486 herein issued by this Commission on the 29th day of May, 1931, permitting allowable runs of 6 per cent of the potential production of the wells as determined by the umpire also provides that:

" 'The umpire shall permit to be supplied any reasonable market demand over and above the reasonable market demand necessary to take care of the percentage of produc- [fol. 176] tion provided in the preceding paragraph hereof, but shall from time to time allot the same to the under-produced and under-run wells. If and when the under-run and under-produced condition shall be eliminated in the field, the umpire shall immediately report the fact to the Commission for its further action and allotment of such market.

" 'Jurisdiction of this cause and of the said petition is hereby retained for the purpose of making such further additional or different orders, rules and regulations as may from time to time appear to be proper, and any interested party may at any time apply to the Commission for any such order, rules and regulations.'

"The Commission further finds from the foregoing verified applications, and from the reports of the umpire that the pipe line demands based upon the average takings over the past ten days are in excess of 200,000 barrels per day;

"That the allowable production, at 6 per cent of potential, under order No. 5486, would be 1,340,588 barrels, from 7 o'clock A. M. June 27th, 1931, to July 1st, 1931, at 7 o'clock A. M., both inclusive;

"That the balance of the June allowable which cannot be produced during the month of June is 200,000 barrels, and that there will be in addition thereto tank bottoms, working stock and June 30th production, not available for running

in June, of 700,000 barrels, or 900,000 barrels, deductable from the foregoing figure of 1,340,588 barrels, or a net of 440,588 barrels, from 7 o'clock A. M., June 27th, 1931, to July 1st, 1931, 7 o'clock A. M., or an average daily production of 110,147 barrels for this period;

"That there is an average daily pipe line requirement, estimated, for the remainder of June, 1931, of 200,000 barrels, or a daily average shortage of fulfilling the market demands of 89,853 barrels;

[fol. 177] "That the Commission's estimated potential of the Oklahoma City field for the remainder of the month of June, 1931, is 2,539,059 barrels per day;

"That it will require at least 4 per cent increase on the Commission's estimated potential of the Oklahoma City field to supply the additional market demand.

"Wherefore, premises considered, and the Commission being advised, it is therefore ordered that effective 7 o'clock A. M. June 27th, 1931, and continuing until 7 o'clock A. M., July 1st, 1931, and/or until further order of this Commission, all wells in the Oklahoma City field not now illegally overproduced, shall be permitted to produce 10 per cent of their potential production as determined by the umpire, under the orders of this Commission, less any permitted overproduction.

"It is further ordered that the producers and purchasers in the Oklahoma City field shall immediately be notified and in such expeditious manner as to give all parties opportunity to take advantage of this order on this date.

"It is further ordered that except as modified herein, the Commission's order No. 5486 shall remain in full force and effect."

(r) That on the 5th day of March, 1931, the Corporation Commission entered a journal entry No. 1856 (plaintiff's Exhibit No. 33, Rec., p. 281), in words and figures as follows:

"Be it remembered, that on this the 5th day of March, 1931, the Commission having had under consideration the application of Wirt Franklin, et al., for increased allowable takings from the Oklahoma City field, and announcement made by the Commission in connection therewith from the bench at the conclusion of its hearing on March 4, 1931;

"And the Commission having before it the request of the Governor of Oklahoma in connection therewith, which is in words and figures as follows, to-wit:

[fol. 178] "'On yesterday you made an order increasing the flow of oil and placing a construction on the order heretofore made as to allowing only two-thirds of the field's allowable to be produced. Personally, I do not believe that the order was the direct cause for reduction of the price but used as an excuse. I believe that the intention was to do so by certain big companies as soon as Congress adjourned. Therefore, I would ask the Commission to reverse the order placing the Oklahoma City field back where it was prior to your order of yesterday and then that everything relative to oil, both before the Commission and before the Legislature be held in abeyance until after the meeting to be held in Texarkana, Arkansas, on Monday, March 9th.

"'It is my hope that at this conference there can be a plan worked out that will reach the situation.

"'The sacrifice that must needs be made by the Independent Producers should be matched by the importers in like sacrifice in importing oil. In other words, we should remove all excuse for reduction on the part of the state.'

"And the Commission being further advised, finds: That the request for staying action on the matter of increasing the allowable takings from the Oklahoma City field should be granted and that action contemplating increased allowable takings should be delayed and held in abeyance until after the foregoing meeting of the several states' representatives in Texarkana, Arkansas, on March 9, 1931, and until such time as the Commission may find its advisable to act thereon.

"It is, therefore, ordered that the announcement of March 4, 1931, increasing the allowable takings in the Oklahoma City field, be and the same is hereby revoked and held in abeyance until further order of this Commission.

"It is further ordered that that part of the announce-

[fol. 179] ments specifically construing runs from even wells from the Oklahoma City field for dates prior to March 1, 1931, is hereby rescinded and that the order pertaining to runs from even wells shall be construed only as permitting the full amount of runs from even wells from, on and after March 1, 1931; and that order No. 5437 as construed herein,

be and remain in full force and effect until further order of this Commission.

"Done at the office of the Corporation Commission, State Capitol, Oklahoma City, Oklahoma, the day and date first above mentioned herein."

That the foregoing consecutively numbered orders of the Corporation Commission, together with the journal entry so identified, constitutes the substantive portions of the administrative orders of the Corporation Commission, issued in the enforcement of the so-called proration law, of which the plaintiff complains;

(13) That in the matter of the consideration of the subject of "waste," by the Corporation Commission, upon the hearings held prior to the entering of the various orders of which complaint is made in this cause, evidenced by the respective narratives thereof filed in this cause in January, 1931, and at the trial offered as so filed in evidence as defendant's exhibit (otherwise unidentified, Rec. pp. 326-327); and from which testimony so taken by the Corporation Commission threatened physical waste was found by the Commission to be imminent, this plaintiff now asks this honorable court to specifically find:

(a) That the Corporation Commission did conduct hearings before entering the various orders complained of, at which testimony concerning threatened physical "waste" of oil, generally, was taken;

[fol. 180] (b) That the evidence so taken did not warrant a finding that actual physical waste above ground was occurring in violation of the Conservation Laws of the State of Oklahoma at any place within said state;

(c) That some of the testimony taken before the Commission, was to the effect that in the opinion of the witnesses so testifying, physical waste in the sense of the use of earthen storage and permitting oil to run into the creeks, would result, if unrestricted flow to capacity of all of the wells in the state, be permitted;

(d) That upon the contrary, other testimony upon the like subject was to the effect that such physical waste of oil, as was incident to earthen storage and the use of creek beds, had not existed in the State of Oklahoma, since

the early days in Cushing, some fifteen or sixteen years back; and the contrary opinion was that if all of the wells in the state were opened to their capacity, the result thereof would be 3-cent gasoline, that the small producer would take his crude as far as his facilities would permit, without waste, and that the larger companies who could not ship all of their oil, would keep their wells shut in until they could increase their facilities to handle same;

That the Corporation Commission in its order No. 5413 (plaintiff's Exhibit No. 33, Rec., p. 281), after the conclusion of said hearings found, with relation thereto:

"That there is an overproduction of crude oil in the State of Oklahoma, attended by waste of gas and of gas pressure, and that the producers of crude oil in the oil pools of Oklahoma are threatening to, and will, unless restrained by the rules and regulations of the Corporation Commission, commit physical waste of crude oil, * * * and waste incident to the production of crude oil, or pe- [fol. 181] troleum, in excess of transportation or marketing facilities or reasonable market demands, and that the commission of such waste is so imminent in each of the areas involved in this proceeding, that orders, rules and regulations of this Commission are necessary in order to prevent such waste."

This plaintiff now requests this honorable court to specifically find that the Corporation Commission was not warranted by the evidence so offered in its hearings, in so finding.

(14) That while the Corporation Commission had evidence before it, with regard to the actual waste of gas and gas energy (order 5413, supra, and particularly p. 6, order 5437, supra) in the production of oil in the Oklahoma City field, it did not make any order or restrictive regulation concerning the same;

(15) That by gas-oil ratio, in the production of crude oil, is meant the ratio of gas utilized to the barrel of oil produced by the well;

(16) That a proper gas-oil ratio in the Wilcox (prolific) area in the Oklahoma City field, should range from 700 to 2,000 cubic feet of gas to the barrel of oil (Rec., p. 106), and that 450 to 5,000 cubic feet of gas to the barrel of oil marks the limit of a proper ratio (Rec., p. 340);

(17) That the Corporation Commission has never fixed any gas-oil ratio for the Oklahoma City field (Rec., p. 110), although every well, in the interest of conservation, should be operated at the lowest possible gas-oil ratio (Rec., p. 341);

(18) That there is a tremendous advantage in having a proper gas-oil ratio, in that the gas in an oil producing formation, particularly when dissolved in the oil, serves [fol. 182] the double purpose of acting (a) as an agency to move the oil horizontally through the oil producing formation to the well bored, and (b) as that element of efficiency in producing oil which will eliminate the necessity of artificial assistance (Rec., p. 110);

(19) That a low gas-oil ratio is one of the most important things in producing oil, regardless of whether the same is being produced under proration or upon full time (Rec., p. 111), also (Rec., p. 535);

(20) That excessive gas-oil ratio production may be corrected by landing the flow string in the proper position in the producing horizon (Rec., pp. 107-108) by running a string of smaller-sized tubing (Rec., pp. 108 and 264), and by proper engineering practice (Rec., p. 346);

(21) That the significance of the application of a proper gas-oil ratio can best be illustrated by a concrete calculation;

(a) To lift 500 barrels of oil, utilizing natural gas as the energy necessary therefor, upon a gas-oil ratio of one barrel of oil to 80,000 cubic feet, would utilize 40,000,000 cubic feet of gas, which, after having been so utilized is then dissipated into the air;

(b) To lift the identical 500 barrels of oil in a well in which the gas-oil ratio was one barrel of oil to 2,000 cubic feet would require 1,000,000 cubic feet of gas, which after having been so utilized, would be likewise dissipated into the air;

(c) The 1,000,000 cubic feet of gas so utilized in the second instance, has served a useful purpose, and has not been wasted; but in the first instance 1,000,000 cubic feet of gas [fol. 183] so utilized served a useful purpose, and the remaining 39,000,000 cubic feet was totally and irrevocably lost, and would (at 6 cents per 1,000 cubic feet, Rec., p. 371) have an intrinsic value greatly in excess of the value of the 500 barrels of oil which were produced in its utilization;

(22) That wells are being produced in the Oklahoma City field on a gas-oil ratio of as much as 700,000 cubic feet of gas to a barrel of oil (Rec., p. 106) indicating the use of 350,000,000 cubic feet of gas to produce 500 barrels of oil in such well;

(23) That the Champlin Refining Company has produced its wells with the exception of its Naden No. 1 upon a gas-oil ratio of not more than 4500 cubic feet of gas to the barrel of oil and that the Naden No. 1 well was "closed in" on July 12th, 1931, to be reconditioned, in order that it might be so produced, and will not be again produced until it can be so reconditioned;

(24) (a) That for the purpose of (1) controlling market demand; (2) pipe line nomination; (3) creating discrimination in favor of all outside producing areas in the State of Oklahoma other than the Oklahoma City field, against the said Oklahoma City field; (4) continuing one Ray Collins as umpire throughout the State of Oklahoma, whose particular business it is to see that the Greater Seminole area is properly cared for; and of continuing one Otto Bradford as assistant umpire in charge of the Oklahoma City producing area; (5) creating, and thereafter taking, a so-called potential upon the wells in the Oklahoma City field, which is a mathematical fiction, contrary to the spirit of and without any significance of a gauge (Rec., p. 48) thereon as required by law, but for the ulterior pur- [fol. 184] pose of enabling favored producers and such of said producers as own great acreage with inside locations drilled thereon, to thereby build up mathematically fictitious potentials that not only affect the allocation of market demand, but thereby enable such favored producer to have at all times an allowable production of oil greatly in excess

of any need therefor, and at the same time prevent the less favored independent operator who does not happen to have either a large acreage or a great number of wells from obtaining sufficient crude oil with which to meet his necessary demands; a so-called General Committee, also denominated by its chairman, Alvin Richards, as "The State Wide Proration Committee" (Rec., p. 286), which supervises the entire administration of proration within the State of Oklahoma (Rec., p. 125), came into existence from a source which the umpire Ray Collins was unable to identify (Rec., p. 128); that this committee is not generally known to the public, and insofar as the record here reveals, has never been approved by the Corporation Commission of the State of Oklahoma, nor is there any public record of just what this committee's duties are, or how it functions in the matter of the allocation of market demand and pipe line nominations (Rec., p. 126);

(b) That the State Wide Proration Committee, as identified by Ray Collins (Rec., p. 125), consists of Richards, of the Pure Oil Company, chairman; Sidwell, of the Prairie Oil & Gas Company; Filley, of the Texas Company; Nicholas, of the Continental Company; Blue, of the I. T. I. O.; Fell, representing the operators in southern Oklahoma; Young, of the Carter Oil Company, and Davis, of the Phillips Company; that this committee acts as a fact-finding body, and concerns itself with potentials and demand for crude oil in the State of Oklahoma, with consequent recom- [fol. 185] mendations to the operators in the pool (Rec., p. 126); that the Committee gets its information upon which it makes its recommendations, from Ray Collins, and a statistician, Mapes, (Rec., p. 126);

(c) That the umpire, Ray Collins, is paid a salary of $24,000.00 per year (Rec., p. 115), that he has never taken an oath of office (Rec., p. 133), or received a formal certificate of appointment as such umpire (Rec., p. 132), and receives his check from the Carter Oil Company, owned by the Standard Oil Company of New Jersey (Rec., pp. 129-130); and that the Oklahoma Pipe Line Company, one of the principal pipe lines serving the Greater Seminole and Oklahoma City areas, is also owned and controlled by the Standard Oil Company of New Jersey (Rec., p. 130);

(d) That the umpire, Ray Collins, was first employed as umpire by one Reeser, president of the Barnsdall Company; that the said Reeser is not a member of the committee, and was not a member of the committee at the time he employed Collins (Rec., p. 129);

(e) That the Oklahoma potential and allowable production for the period of January, 1931, based upon this so-called State Wide Proration Committee's recommendation, and thereafter promulgated under order No. 5413 of the Corporation Commission of the State of Oklahoma (plaintiff's Exhibit No. 33, Rec., p. 281), was in the following proportions:

Estimated Potential for January, 1931

		Percent of total
Oklahoma City	5,388,298	86.2%
Seminole	533,918	8.5%
Balance of state	330,003	5.3%
Total estimate	6,252,219	100.0%

[fol. 186] Allowable Production for January, 1931

		Percent of total
Okla. City allowed 1.58% of its potential or	85,000	16.8%
Seminole allowed 35.3% of its potential or	188,366	37.2%
Balance of state 70.5% of its potential or	232,729	46.0%
Total	506,095	100.0%

(Plaintiff's Exhibit No. 11, Rec., p. 36.)

(f) That there are six of the major pipe line companies (not including Champlin) that serve the Greater Seminole area with 290,000 barrels daily capacity (63.57% of the total pipe line facilities of that field), and also serve the Oklahoma City field with 203,500 barrels daily capacity (68.75% of the total pipe line capacity facilities of that field) (plaintiff's Exhibits No. 16 and No. 17, Rec., pp. 167 and 168); that of these major pipe line companies, or their ownership, three (Empire, Carter and Prairie) are represented on the General Advisory Committee that allocates market demand and makes pipe line nominations (Rec., p. 126);

(g) That five of the seven companies, in addition to the southern Oklahoma representative, that are represented on that Committee, have produced 41,712,413 barrels (plaintiff's Exhibit #19), constituting 28.35% of all the oil produced in the Greater Seminole area, since October 16, 1929; and for comparison, the same five companies have produced only 1.1% of the oil produced in the Oklahoma City field, during the first six months of 1931;

(h) That another company, however, the Indian Territory Illuminating Oil Company, represented on this all-powerful committee, produced in the Oklahoma City field [fol. 187] 5,681,949 barrels (plaintiff's Exhibit No. 20) being 23.52% of all the oil produced in that field during the first six months of 1931;

(i) That as a result of the allocation of 161,146 barrels to the Oklahoma City field for June, 1931 (plaintiff's Exhibit No. 18, Rec., p. 169), and the allocation of 179,066 barrels to the Greater Seminole area for the like period (plaintiff's Exhibit No. 14, Rec., p. 124), the six pipeline companies serving both fields, were permitted to produce 56,396 barrels within the Greater Seminole area, from leases which these companies owned or controlled in that area, constituting 31.5% of all of the production for such area; while three of the same pipeline companies (or corporations in affiliated control), towit: Indian Territory Illuminating Oil Company, Prairie, and Shell, produced 37,608 barrels from leases which these three or affiliated companies owned, or controlled in the Oklahoma City field, constituting 23.3% of the total production for the Oklahoma City field; and of particular significance is the production of the Indian Territory Illuminating Oil Company for this period of time, in the total of 35,892 barrels, constituting 89.73% of its total pipeline capacity, and 23.3% of the total production for the Oklahoma City field (plaintiff's Exhibits Nos. 17 and 18, Rec., pp. 168 and 169);

(j) That Exhibits No. 15 (Rec., p. 137), No. 19 (Rec., p. 173) and No. 20 (Rec., p. 173) disclose that the following named companies, represented on the General Advisory Committee, hereinbefore identified (Rec., p. 125), produced in the respective areas the total number of barrels of oil set opposite the name of each:

[fol. 188]

	Greater Seminole area				Oklahoma City area			
	Pipe line capacity, Exhibit 16	Per cent of total P. L. capacity	June allowable production, Exhibit 14	Ratio allowable production to P. L. capacity	Pipe line capacity, Exhibit 17	Per cent of total P. L. capacity	June allowable production, Exhibit 18	Ratio allowable production to P. L. capacity
Companies with pipe lines in both fields:							540	
*Empire (affiliated with I. T. I. O.)	10,000	2.19	5,403	54.03	40,000	13.52	35,352	89.73
*Oklahoma Pipe Line Co. (Carter)	55,000	12.06	17,359	31.56	20,000	6.76	none	
*Prairie	110,000	24.11	16,628	15.11	45,000	15.20	1,031	2.29
Magnolia	25,000	5.48	12,133	48.53	26,000	8.78	none	
Stanolind	72,000	15.78	410	.57	60,000	20.27	none	
Shell	18,000	3.95	4,563	25.35	12,500	4.22	229	1.83
Total—Companies with pipe lines serving both fields	290,000	63.57	56,396	19.45	203,500	68.75	37,608	18.48
Companies with lines serving one field only:								
Barnsdall	10,000	2.19	4,081					
Consolidated	4,500	.98						
Cosden	12,000	2.63	5,974					
Deeprock	10,000	2.19	4,317					
Globe	4,000	.88						
Gulf	45,000	9.86	19,242					
P. & R.	3,700	.81						
Pure	10,000	2.19	6,961					
Texas Empire	35,006	7.68						
White Oak	8,000	1.76						
*Continental	.....	.....	.....	.....	25,000	8.45	685	
Sinclair Texas	.....	.....	.....	.....	60,000	20.27	7,970	
*Texas	24,000	5.26	5,480					
Tidal	.....	.....	2,358	.....	7,500	2.53		
Total—Companies in one field	166,200	36.43	48,413	.....	92,500	31.25	8,655	
Balance of production by Producers without pipe line facilities	.....	.....	74,157	.....	.....	.....	115,339	
Totals	456,200	100.00	179,066	39.25	296,000	100.00	161,146	54.44

* Indicates companies that are represented on the General Advisory Committee that allocates market demand (Rec., pp. 125-127).

[fol. 189]

	Greater Seminole area		Oklahoma City field	
	Oct. 18, 1929, to June 1, 1931, Plaintiff's Ex. 19		First 6 months 1931, Plaintiff's Ex. 20	
	Barrels	Per cent	Barrels	Per cent
Carter Oil Company	14,390,944	9.78	none	
Dick Young (Rec., p. 126).				
Continental Oil Company	2,273,306	1.55	127,057	.53
Mr. Nichols (Rec., p. 125).				
Howard-Fell-Independent of	none		none	
Southern Okla. Producers (Rec., p. 126).				
Indian Terr. Illum. Oil Co	5,221,511	3.55	5,681,949	23.52
Burdett Blue (Rec., p. 125).				
Subsidiary of Empire G. & O	3,181,350	2.16	none	
Phillips Petroleum Corp	5,614,358	3.82	3,465,880	14.34
W. N. Davis (Rec., p. 127).				
Prairie Oil & Gas Co	13,633,360	9.27	164,758	.68
J. S. Sidwell (Rec., p. 125).				
Pure Oil Company	7,296,853	4.95	none	
Alvin Richards (Rec., pp. 126-7).				
Texas Company	4,117,950	2.80	none	
Mr. Filley (Rec., p. 125).				
Total for companies represented on genl. advisory com	55,729,632	37.88	9,439,644	39.07
Total by contributors not represented on genl. com	90,299,802	61.38	11,991,596	49.63
Produced by non-contributors	1,093,015	.74	2,730,259	11.30
Grand total for period	147,122,449	100.00	24,161,499	100.00

(k) That without regard to local refinery needs, and with the Champlin pipeline in both areas eliminated, a comparison of pipe line facilities against allowable production for the Greater Seminole and Oklahoma City areas, taken from plaintiff's Exhibit No. 14 (Rec., p. 124), Exhibit No. 16 (Rec., p. 167), Exhibit No. 17 (Rec., p. 168), and Exhibit No. 18 (Rec., p. 169), reveals the following (see sheet herewith inserted):

(25) That the posted price of 38 gravity Oklahoma crude in the Oklahoma City field as of October 25, 1930, was $1.01 (Rec., p. 230); that the cost of manufacturing into its by-products such barrel of oil when so purchased, was approximately 35c (Rec., p. 232), and the transportation cost [fol. 190] thereof was .05 cents per barrel (Rec., p. 232), making the total cost at the Champlin refinery of Oklahoma City oil, if so purchased during the period, of approximately $1.41 per barrel (Rec., p. 232); that the market value of the refined products from such barrel of oil when so manufactured during such period of said posted price was $1.64 (Rec., p. 231);

That on December 29, 1930, the posted price of 38 gravity Oklahoma crude in the Oklahoma City field was 67c (Rec., p. 233), that the cost of manufacturing and transporting remained the same; and that the market value of the refined products from such barrel of oil when so manufactured during such period of said posted price was $1.48 (Rec., p. 233);

That on March 5, 1931, the posted price of 38 gravity Oklahoma crude in the Oklahoma City field was 63c per barrel, that the cost of manufacturing and transporting remained the same; and that the market value of the refined products from such barrel of oil when so manufactured during such period of said posted price was $1.37½ (Rec., p. 234);

That on June 1, 1931, the posted price of 38 gravity Oklahoma crude in the Oklahoma City field was reduced to 35c per barrel, that the cost of manufacturing and transporting remained the same; and that the market value of the refined products from such barrel of oil when so manufactured during such period of said posted price was $1.01 (Rec., p. 234);

That the manufacturing cost of 35c per barrel used in the foregoing calculations does not make any allowance for depreciation; that the lifting cost of one barrel of oil in the Oklahoma City field during all the period of time was .053c (Rec., p. 236), and that the approximate transportation cost during all the period of time was 5c per barrel (Rec., p. 232);

[fol. 191] (26) That the cost of the maintenance of the umpire's office, his assistants and matters incident thereto in all of the producing areas of the State of Oklahoma, outside of the Oklahoma City field, is borne by the Greater Seminole operators only (Rec., p. 138); and the like cost in the Oklahoma City field is borne by some twenty of more than fifty operators in that area (Rec., p. 203); that for the period from November 1, 1929, to January 1, 1931, the operators in the Greater Seminole area contributed to such expense account the sum of $95,181.39 (Exhibit No. 15, Rec., p. 137); and that for the period from January until June, 1931, there was no material change in the list of such contributors and that the said contributions were calculated against said contributors upon the basis of number of barrels produced by each in the manner shown by Exhibit 15 (Rec., p. 137); that out of the funds so obtained substantial portions thereof were allocated to the payment of counsel fees for special counsel appearing upon behalf of the Attorney General's office and the Corporation Commission in opposition to this plaintiff in this cause (Exhibit No. 21, Rec., p. 201).

That the Champlin Refining Company producing oil in the Greater Seminole area and in the Oklahoma City area has not contributed in any sum whatsoever, to the Greater Seminole fund (plaintiff's Exhibit No. 15, Rec., p. 137), nor to the Oklahoma City fund (plaintiff's Exhibit No. 22, Rec., p. 203);

That while the contributions are made in the Greater Seminole area upon the basis of barrels of oil produced, contributions in the Oklahoma City field are based upon the payment of membership fee in the organization, upon which one vote is allowed for each $100.00 or fractional [fol. 192] portion thereof paid by such member, with the proviso that in no event shall any member cast more than 25% of the total vote (Rec., pp. 208-209); that the record

does not disclose upon what basis of production a membership vote may be available for the said contribution of one hundred dollars, or fractional part thereof, that so entitles the holder to such vote;

(27) That on June 1st, 1930, approximately 140 wells (plaintiff's Exhibit No. 24, Rec., p. 217), in the Oklahoma City field were being calculated in the total potential of the field for market demand and percentage purposes wholly upon an estimated potential (Rec., p. 219) which was entirely arbitrary (Rec., p. 219), and did not rise to the dignity of a gauge as defined by the orders, in that, some of said wells were estimated on an "eight-hour run and some not" (Rec., p. 220); that including such estimated potentials the total potential of the Oklahoma City field for June, 1931, was found by the Corporation Commission to be 8,963,977 barrels (Exhibit No. 24, Rec., p. 217) and thereafter used for all purposes in which such potential was a factor;

(28) That the plaintiff company has not sold any crude oil to any purchaser during 1930, and 1931 (Rec., p. 280), and that from time to time it has posted a price in the Oklahoma fields (Rec., p. 281);

(29) That under the plan of intermittent flowing of oil and gas wells as practiced under the proration orders in the Oklahoma City field, all of the wells which are permitted to be flowed upon a given day are practically all in operation during the day time with a very limited production at night (Rec., pp. 382-383); that as a result thereof there is a waste of gas upon account of the lack of uni- [fol. 193] formity of operation with its attendant inability on the part of the gasoline plants to utilize the gas so produced (Rec., p. 383); that it is not practicable to put in a sufficient number of plants to take care of such intermittent flush production (Rec., p. 383); that the requirement of the production thereon upon a proper gas-oil ratio would enable the industry to take care of such gas for the manufacture of natural gasoline (Rec., p. 384); that approximately 437,000,000 cubic feet of gas (Rec., p. 369) is being taken daily in the Oklahoma City field by the gasoline plants from which 218,000 gallons of natural gasoline (Rec., p. 370) is being manufactured, of a value of 1½c per gal-

lon (Rec., p. 370); that a residue gas of the value of 6c per thousand (Rec., p. 371) results, for which the land owner receives before the gasoline is extracted a fraction of 1c per 1000 cubic feet (Rec., p. 376), of which approximately 100,000,000 cubic feet, only, is estimated to be marketed daily for domestic consumption (Rec., p. 371);

(30) That for the purpose of determining the potential of the Greater Seminole area the daily average of the actual production in that field for a given month was taken by the owners of such properties, to arrive at the potential for each lease and that from the 1st of November, 1929, until April, 1930, each lease was declined 3% per month, and this method of the use of the decline curve was the result of a consultation among the various engineers of the producing companies who had made a study of such decline curves (Rec., p. 141); that the 3% decline so averaged was in conformity with the past history of the field (Rec., p. 142); that thereafter the operators in the Seminole area took a fifteen-day gauge to check up on such decline curves which showed a slight increase over the volume at which [fol. 194] the same had been carried, and that thereafter the potential for the Greater Seminole area was carried upon the basis of the fifteen-day gauge until March, 1931 (Rec., p. 142);

(31) That prior to January 1st, 1931, production in the Oklahoma City field was prorated upon a "time basis," which means the wells were allowed to produce intermittently for given periods of time; that after that date prorated production in the said Oklahoma City area was changed to a percentage production based upon potentials calculated as herein set forth; that no gauge of any producing well in the Oklahoma City field since January 1st, 1931, has ever been taken other than by opening such well in the presence of such witnesses as were designated by the operators for a period of four hours continuous flow and thereafter multiplying such four-hour flow by the figure six to obtain an estimated twenty-four hour flow; that subsequent to the 10th day of February, 1931, it was ruled by the Corporation Commission that such potential was further subject to the qualification of a division by three upon the theory that the result of multiplying by six gave a potential entirely too high and that if divided by three would

give more nearly an accurate potential of such well; that in the calculation of the potential of said producing area for June 1st, 1931, upon some 144 wells of a total of 762 producing wells in that producing area the potential thereof was entirely arbitrarily estimated in the umpire's office, and that the total potential of said 144 wells so estimated was 1,780,473 barrels or 19.8 per cent of the total calculated potential of said producing area of 8,963,977 barrels, and upon that total potential thus calculated the operators were allowed to produce two (2%) per cent of such estimated capacity;

[fol. 195] (32) That no gauges of any character have ever been taken in the State of Oklahoma by anyone other than by the persons authorized by the orders and rules of the Corporation Commission;

(33) That the taking of a gauge as that term is defined and used in the industry, when employed in contracts with reference to purchase of property or any engagement that has to do with oil producing lands, means a continuous flow of the well being so gauged for thirty days' time, and that the measured volume of production upon the last day determines the gauge of the well (Rec., p. 48);

(34) That the Arbuckle lime area containing the greater portion of the producing area of the Oklahoma City field is now seriously affected by the encroachment of water and that by far the greater volume of oil to be ultimately recovered in that producing zone has been already obtained, so that a large percentage of the wells in that producing zone cannot now upon full-time capacity make a volume of oil equal to the allowable percentage of production in said producing area;

(35) That the umpire, Ray Collins, stated while testifying before the Corporation Commission in substance that in the administration of the law he was not interested in the public or the refineries, but was only concerned with the operators' interests (Rec., pp. 146 and 147);

(36) That notice of the taking of a so-called gauge in one field (notwithstanding the relation of market demand allocated thereto) is not given to any producer in any other field (Rec., p. 151);

(37) That assignment of market demand for the state (Rec., p. 154) is made by the Corporation Commission upon the recommendation of the umpire, Ray Collins, and one [fol. 196] Mapes (Rec., p. 152), who get their information from the different purchasing companies (Rec., p. 152), through the heads of the pipe line departments (Rec., p. 152), mostly members of the so-called State Wide Proration Committee;

(38) That the umpire considered "the potential of the Oklahoma City field (to be only) a measuring stick to allow each producer a ratable taking out of the field" (Rec., p. 155);

(39) That the effect of proration in the Oklahoma City field in a physical sense, has been to dam up the production thereof and thereby prevent settled production therein, with its attendant absorption of market demand, construction of storage and pipe line facilities, and the utilization of gas energy in a proper ratio, without wasteful dissipation of the residue thereof so necessary in modern life for domestic consumption;

(40) That the Oklahoma City producing area and the Greater Seminole producing area are separated approximately sixty-five miles (Rec., p. 32) and that the area between the two fields is a sinclinal depression, containing only water (Rec., p. 32); thereby precluding the draining of one producing area into or from that of the other, or into or from any other field in the State of Oklahoma; that a well drilled in the Oklahoma City field cannot in anywise affect any well in the Seminole area, or in any other area, and likewise a well drilled in the Seminole producing area cannot in anywise affect a well drilled in the Oklahoma City field, or in any other area (Rec., p. 34);

(41) That the structure underlying the Oklahoma City field may be defined as a buried anticlinal ridge of truncated or ordovician rocks overlain in all probability by Pennsylvania shales, in which truncation has cut across [fol. 197] the top of the Arbuckle limestone to the east side of the field. The truncation is westward with a dipping slope and ranges the beds in their series in which they all arise, toward the east; the first series or beds producing the field being the Arbuckle limestone, the next being the Johnston

or Kinter sand, the next being the School Land sand, and the next being the prolific Wilcox sand (Rec., pp. 18-21, inc.). (See, also, plaintiff's Exhibit 12, Rec., p. 77.)

(42) That oil and gas may be taken from more than one of said producing areas in the Oklahoma City field notwithstanding the casing in such well has only been carried to the first producing zone encountered, thereby in effect converting more than one of said producing areas, insofar as gas energy is concerned, into a common pool;

(43) That a well may be so drilled in the Seminole area that it will produce from all of the sands in that area whereas in the Oklahoma City area such cannot be done (Rec., p. 31);

(44) That physical waste is the actual waste of oil and gas as substances, as where brought to the surface and allowed to evaporate or leak away, generally restricted in definition to waste that occurs after oil and gas have been reduced to possession;

(45) That underground waste is a term intended to cover theories regarding what takes place underground during the recovery of oil; there is a vast difference of opinion among geologists and petroleum engineers as to whether underground waste as such is susceptible of proof in any case, and such theory is not at the present time a substantive fact in petroleum engineering (Rec., pp. 252 and 265); that there is not now in geology or petroleum engineering any recognized or accepted method of determining underground waste;

[fol. 198] (46) That conservation is the utilization of any product with a maximum of efficiency and a minimum of waste (Rec., p. 253);

(47) That the ability of an oil producing reservoir to produce oil under the energy of gas in saturation is under either hydraulic, volumetric or capillary control; that by the rate of decline of the production and the decline of the pressure in the wells the type of the control in the producing sand may be determined (Rec., p. 258); that if the rate of decline in the pressure is greater than the rate of decline in production the control is volumetric; that if the

rate of decline in production is greater than the rate of decline in pressure the control is capillary; that a producing zone under hydraulic control may be defined as that reservoir in which the laws of hydraulics control (Rec., p. 258);

(48) That the ultimate recovery of oil withdrawn from a producing zone is not determined by the period of time during which such withdrawal is made (Rec., p. 259);

(49) That the intermittent or irregular producing of an oil well tends to make the conditions around the base of the well unstable (Rec., p. 269); that there are instances in the industry in which it has been found that the withdrawal of oil from wells in a very rapid manner results in the greatest possible recovery therefrom (Rec., pp. 260-261);

(50) That in California wide open flow has been used in practically all of the oil fields of that state and it has had the greatest recovery per acre of any oil state in the Union (Rec., p. 262);

(51) That the method of operation that will give the greatest ultimate recovery per acre in the Oklahoma City field is that method of production which will put a barrel [fol. 199] of oil at the top of the ground with the least volume of gas necessary to be utilized in so doing (Rec., p. 263);

(52) That the control of pressure in an oil well may be effected by the installation of tubing inside the casing (Rec., p. 264);

(53) That the factors which govern the production of oil upon a proper gas-oil ratio are natural and artificial (Rec., p. 266). The natural factors are those of production which are the type of reservoir, rock pressure and the character of the oil with the volume of gas. The artificial factors constitute the manner in which the well has been finished, the way it has been tubed, the place in which the flow string has been set and the method of handling the same after it has been completed in the oil bearing sands (Rec., p. 267);

(54) That the character or conduct of a particular well can only be calculated by physical or actual tests (Rec., p. 267);

(55) That the best measure of conservation in the final analysis is the most good that can come to the people from the use of our natural resources (Rec., p. 268);

(56) That the greatest ultimate recovery from the Oklahoma City field will be obtained by flowing the wells therein steadily upon a proper oil-gas ratio that can best be determined from the characteristics of the particular well (Rec., p. 268);

(57) That an oil well may be best operated upon a percentage between 33⅓ and 66⅔ of its capacity (Rec., p. 268);

(58) That if the Corporation Commission desires to bring about the recovery of the most oil in the reservoir in the oil [fol. 200] fields of the state at the least expense to the gas reserve, the volume of oil that is produced by the well should be determined by a proper gas ratio, and if that proper gas-oil ratio be interfered with by an arbitrary ruling in administrative orders the best result cannot be obtained (Rec., p. 269);

(59) That the factor of posted price or market value of any product should not enter into the matter of its conservation (Rec., p. 269);

(60) That neither the evidence before the Corporation Commission nor the findings and orders of the Commission, and/or the evidence offered in this court disclose or show physical waste of oil in the Oklahoma City field;

(61) That upon the contrary such evidence does disclose and show that gross physical waste of gas and gas energy has been at all times openly practiced in that field without restrictive interference for the conservation thereof by order or otherwise, upon the part of the Corporation Commission.

Respectfully submitted.

H. G. McKeever, Harry O. Glasser, Edgar A. DeMeules, Geo. S. Ramsey. Of Counsel: Nathan Scarritt, Van Stewart, Roy Elam, H. H. McKeever, Garrett Logan, Villard Martin, E. S. Champlin.

[File endorsement omitted.]

[fol. 201] IN UNITED STATES DISTRICT COURT

[Title omitted]

OBJECTIONS TO DEFENDANTS' PROPOSED SPECIAL FINDINGS OF FACT—Filed Aug. 28, 1931

Now comes the Champlin Refining Company, a New Mexico Corporation, Plaintiff, and makes the following objections to the Defendants' Proposed Special Findings of Fact;

That Numbers I, II, III, and paragraphs 1 and 2 of IV, are general upon the allegations of Plaintiff's Third Amended and Supplemental Bill of Complaint, and that Numbers 1, 2, 3, 4, 5, 6, 7 and 8 of Plaintiff's Requested Findings of Fact, present a more accurate statement of the evidence upon the subject matter in the respectively suggested findings, and should therefore be adopted as the finding of facts upon such controverted issues;

That paragraph three of Number IV of Defendants' Proposed Special Findings, is grossly misleading as to the potential production of McCalep Well #1 for March 4, 1931, in that such potential was then carried on the records of the Corporation Commission (See Exhibit #43, p. 2) at [fol. 202] 15,829 barrels; that the potential of said well for April 1st, 1931, was then carried upon the same records (Defendants' Exhibit X, p. 4) at 11,648.7; that in Defendants' said Proposed Findings, the potential so carried is arbitrarily divided by three, which if done will necessarily require the calculation of daily allowable upon a percentage correspondingly three times as great as customarily used in such calculation;

That Plaintiff does not have objection to a finding such as Defendants propose in said paragraph, if the potentials be found in accord with the record as introduced in evidence;

That said proposed finding is open to the further objection that the McCalep Lease includes Lots 30 to 35, and 50 and 51, in Block 2, Roosevelt Place Addition, (Record p. 292);

That paragraph four of Number IV of Defendants' Proposed Special Findings, is likewise grossly misleading as to the potential production of Naden Well #1, for March 4, 1931, in that such potential was then carried on the

records of the Corporation Commission (See Exhibit #43, p. 2) at 16,757 barrels; that the potential of said well for April 1st, 1931, was then carried upon the same records (Defendants' Exhibit X, p. 4) at 9,915.54; that in the Defendants' Proposed Findings the potential so carried is arbitrarily divided by three, which if done will necessarily require the calculation of daily allowable upon a percentage correspondingly three times as great as customarily used in such calculation (see Order #5445, Exhibit #33, authorizing the taking of the potentials herein set forth);

That the Defendants write the words, "revised formula" in said finding, to warrant the unusual and greatly reduced potential so found for said wells, and but confuse the issue in so unnecessarily doing;

That the identical confusion follows proposed finding of potential production of Seal Well #1, paragraph five, Number IV, at 148.96 barrels for April 13, 1931, which should [fol. 203] have been 440.88 barrels (Defendants' Exhibit X, p. 4); and for Seal Well #2, at 272.72 barrels, which should have been 818.16 barrels (Defendants' Exhibit X, p. 4);

That Plaintiff does not object to Defendants' Proposed Finding Number V, except that it most earnestly requests that its Number 9 should be allowed in connection therewith; and that that portion of said finding which proposes that, "there was no evidence that closing in or pinching in its wells in the Oklahoma City field will cause water to enter the oil and gas sand, or damage its wells, or result in waste of oil and gas", should not be granted, for the reason that an affirmative finding of fact should not be made upon a technical subject, merely because the record thereon be silent;

That Plaintiff objects to the following Proposed Special Findings of Fact by Defendants, as set forth in Number VI thereof:

(a) "None of said producing formations overlie any of the others",

which finding should be limited to pools (Rec. p. 65) instead of formations;

(b) "with a potential production of 564,908 barrels per day determined from gauges made under rules and regulations of the Commission",

when in truth and in fact, Rec. p. 141) such gauges were actual physical gauges, made after March 15th, and that prior thereto the scientific decline curve method (after consultation with Engineers of the Companies who had made a study of decline curves) at 3% per month (Rec. pp. 141 and 142) had been applied;

That decline curves on the Seminole field had been available since 1927, (Rec. p. 141); and that actual gauges were slightly higher than "decline curve" gauges (Rec. p. 142);

(c) That said wells in the Seminole area

"Are separately owned and operated by 80 different corporations, partnership and individuals, * * * and 62 or about 77% thereof known as non-integrated companies",

[fol. 204] is totally outside the evidence, in-as-much as such statement but represents an unwarranted conclusion from the caption of Exhibit #14, Rec. p. 124;

The further proposed finding that,

"these non-integrated producers own 894, or 37% of the producing wells, with a potential production of 225,507 barrels of oil per day, or about 40% of the total production of the area",

includes the following named companies—contrary to the most superficial knowledge of the public—as non-integrated companies:

Skelly Oil Company,
Indian Territory Illumin. & Oil Co. (owned by Cities Service)
Sinclair Oil & Gas Company,
Phillips Petroleum Company,
Wirt Franklin,
Louisiana Oil & Ref. Co., (Standard of New Jersey)
Mid-Kansas Oil & Gas Co., (Ohio Oil Company)
Atlantic Oil Producing Co., (Atlantic Refining Co.)
Twin States Oil Company,
British-American Oil Co., (Imperial of Canada)
Blackwell Oil & Gas Company; (Exhibit #14, Rec. p. 124);

That the above named integrated companies in fact so wrongfully classified as non-integrated, own 563 wells of

the 894 referred to by Defendants, with a total potential of 108,129 barrels of the 225,507 barrels so erroneously classified by Defendants;

(d) That the proposed finding (Paragraph 4, Number VI) that,

"On June 15, 1931 there were 746 producing oil wells in the Oklahoma City field having a total potential production of 2,987,993, calculated according to the Corporation Commission formula",

is open to the same objection heretofore made, in that the potential for said wells for said date, as carried upon the records of the Corporation Commission, was 8,963,977 (Exhibit #24, Rec. p. 217), and that the use of the so-called [fol. 205] "revised formula" is but an effort to minimize the comparison of such potentials when made, with Seminole potentials, as carried upon said records of the Corporation Commission;

That the defendants again ask this Honorable Court to find that

Skelly Oil Company,
Indian Terr. I. & O. Co.,
Phillips Petroleum Co.,
Wirt Franklin,
British-American Oil Co., and
Chatham Oil Company, (Exhibit #18, Rec. p. 169);

are non-integrated companies;

That the absurdity of Defendants' proposed finding is made evident, when attention is called to the fact that Sinclair Oil & Gas Company is found to be a non-integrated company in Seminole, and an integrated company in Oklahoma City; and that Skelly Oil Company and Indian Terr. Ill. & O. Co., are non-integrated companies in Oklahoma City, while C. C. Julian and the Century Company are integrated ones;

That the Plaintiff objects to the further finding in said paragraph, that

"the Oklahoma City field has been regulated by orders, rules and regulations of the Corporation Commission, made under said act for the purpose of preventing waste and protecting the co-equal rights of the several owners of the

surface and their respective leases, * * * by limiting the production from each well to that proportion of its potential production which the reasonable market demand for oil from said field as found from the evidence before it to exist from time to time bore to the potential production therefrom at the time",

for the reason that all that has been done by the Corporation Commission in this regard, has been done in the interest of a price-fixing arrangement and without regard to conservation;

That the Plaintiff objects to the Defendants' Proposed Special Finding No. VII, in the following particulars:

(a) That following the word "demands" in Line 7, Paragraph 1, should be included the further finding:

[fol. 206] together with the failure or inability to provide adequate steel storage;

(b) The Plaintiff objects to the further proposed finding in the same paragraph

"that it is a well known fact in the oil industry that oil can be best conserved by holding it in storage in the natural underground reservoir";

that such finding, if made, must be limited to that period of time prior to any drilling in any such reservoir, for as a matter of fact and as the evidence discloses, after drilling has been commenced in any producing area, the oil there to be ultimately recovered, can best be conserved by the earliest possible reduction to possession, rather than to attempt to conserve the same by rules and regulations that may, or may not, prove efficacious;

(c) The Plaintiff objects to Paragraph 2 of Defendants' Proposed Special Finding No. VII, for the reason that the same is but a statement of half truth;

That to permit oil wells in flush or semi-flush pools to flow wide open does result "in the use of an excessive amount of gas pressure and an uneconomical and wasteful use of gas energy", which fact remains constant whether production be so continued upon such wide open flow for a period of two hours on a given day under proration orders,

or be so continued for a period of twenty-four hours upon the identical day without any regulation of any kind, the resultant waste of gas energy being purely relative under such circumstances;

That this Honorable Court should find

"that conservation of gas energy can only be brought about by the adoption of rules and regulations of the Corporation Commission requiring the production of oil and gas upon and in proper ratio during any period of time that any such well shall be produced";

(d) That the word "storage", fourth line from the bottom of third paragraph, Defendants' Proposed Special [fol. 207] Finding VII, should be eliminated from a definition of non-integrated companies, in that storage is and may be available to integrated, as well as non-integrated, companies, and the failure to build gas-tight steel storage does not ipso facto classify any oil company, for obviously storage should be a part of any strictly producing company's business, and it is the producing company only, that is properly identified in the industry as non-integrated, thereby being distinguished from the company engaged in the transporting, refining and marketing branches of the business;

(e) That Plaiatiff objects to all of the Defendants' Proposed Special Findings of Fact in paragraph 3 of No. VII, with relation to "earthen storage", the damage to oil in creek beds, the possibility of rain washing the same away, or the evaporation of the higher volatile contents thereof, by exposure to the air, for the reason that same is entirely historical and without significance in this controversy, as found by Commissioner Paul Walker in his Order No. 5437, of February 14, 1931, wherein the Commission put the matter of earthen storage and all of its attendant difficulties, once and for all, definitely out of consideration. We quote the order:

"Another element of physical waste, not present, but contemplated or threatened, is that of earthen storage. Witnesses indicated that if an allowable taking is permitted far in excess of either the demand of the market of the ability of the market to absorb, operators who do not

have access to pipelines as advantageously as their neighbors and who are not provided with steel storage, will attempt to place oil in earthen storage. With this argument, we are not greatly impressed. It harks back to the days of the Cushing and the Healdton Fields, when the State had neither a conservation law nor a conservation policy.

Earthen storage is now forbidden in any field in Oklahoma both by statute and by specific orders of this Commission. Earthen storage cannot be had except it be accompanied by physical waste as well as untold hazards in a [fol. 208] field thus proximate to a great city. Our orders specifically prohibit the allowing of oil 'to leak or escape from natural reservoirs, wells, tanks, containers or pipes'. (See rule 12 of this Commission's Order No. 1299.)

We think, however, in this connection, in-as-much as the question has been raised that we should give specific notice that earthen storage cannot either be used or tolerated in the Oklahoma City field."

The Plaintiff further objects to the special finding in said paragraph that

"more waste oil ran down the creeks in the Glenn Pool than was ever produced in Illinois",

for the reason that this Honorable Court may with the same propriety say that under proration more gas and gas energy have been wasted in the Oklahoma City Field than has been produced in Pennsylvania during all of the life of the industry in that State.

(f) That the final paragraph of Defendants' Proposed Special Finding No. VII, to the effect that

"conditions of waste * * * similar to those described in these old orders would again arise",

cannot be adopted in view of the definite position announced by the Corporation Commission in its Order No. 5437 just quoted;

The Plaintiff objects to the Defendants' Proposed Special Finding of Fact No. X, in the following particulars:

(a) To the omission of Section 2 of the Oklahoma Oil Conservation Act approved February 11, 1915, in the first paragraph thereof, and respectfully asks this Honorable Court to include Section 2 of said act in such finding;

(b) Plaintiff further objects to the proposed special finding in the third paragraph of No. X, to the effect that

"the abstract of the evidence (upon the subject of waste) before the Commission so introduced sustained its findings of fact therein",

for the reason that such finding would be unwarranted upon the record so introduced;

[fol. 209] That plaintiff objects to Defendants' Proposed Special Finding of Fact No. XV, for the reason that said finding fails to include therein the reason for the action of the Corporation Commission indicated by said Journal Entry;

That in truth and in fact said Corporation Commission did, on the 4th day of March, 1931, announce from the bench pursuant to a hearing on the application of Wirt Franklin, and others, that an increase in the allowable taking for the Oklahoma City field would be entered, and that immediately thereafter the Governor of the State addressed to the Commission a letter, a portion of which is quoted in said Journal Entry, as follows:

"On yesterday you made an order increasing the flow of oil and placing a construction on the order heretofore made as to allowing only two-thirds of the fields allowable to be produced. Personally, I do not believe that the order was the direct cause for reduction of the price but used as an excuse. I believe that the intention was to do so by certain big companies as soon as Congress adjourned. Therefore, I would ask the Commission to reverse the order placing the Oklahoma City field back where it was prior to your order of yesterday and then that everything relative to oil, both before the Commission and before the Legislature be held in abeyance until after the meeting to be held in Texarkana, Arkansas, on Monday, March 9th.

"It is my hope that at this conference there can be a plan worked out that will reach the situation.

"The sacrifice that must needs be made by the Independent Producers should be matched by the importers in like sacrifice in importing oil. In other words, we should remove all excuse for reduction on the part of the State."

That after the receipt of said letter, the Corporation Commission did rescind its oral announcement of March

4th solely upon account of the request of the Governor, which was predicated, as the letter clearly indicates, entirely upon an effort upon the part of the Governor to maintain a price for crude oil.

[fol. 210] That plaintiff objects to the Defendants' Proposed Special Finding of Fact No. XXI, in the following particulars:

(a) To this Honorable Court finding as a fact, that which the Corporation Commission did find as such as therein set forth in the second paragraph thereof, for the reason that the findings therein set forth are not supported by the evidence in this cause, and that this Court may do no more than find that the Corporation Commission did so find upon the evidence that was before it; that it would be error for this Court to find a fact from a finding of the Commission upon evidence before that Commission, and not submitted to this Court; that the finding of this Court should go no further than to include a finding that the Corporation Commission did so find;

(b) That the plaintiff objects to this Court finding, as the Corporation Commission did find, as set forth in paragraph 4 of said order, that

"The curtailment plan in this order set forth will tend to conserve natural gas and gas pressure in the pools to which it shall be applied",

for the reason that the evidence in this cause does not so warrant, but sustains the contrary finding, that to conserve gas and gas energy, crude oil in saturation therewith should be produced upon a proper gas-oil ratio only, and that such production should be without regard to the time of operation of such well, or wells;

Plaintiff objects to the defendants' Proposed Special Finding of Fact No. XXII, in the following particulars:

(a) That following the words "to the amount of", and before the words "the reasonable", fourth line from the bottom of page 31, being paragraph 2 of Order No. XXII, should be added the words, "what the Commission found to be";

(b) The Plaintiff further objects to the finding in the conclusion of said paragraph in the following [fol. 211] words,

"that the present restriction of production of oil therein conforms to the amount of the reasonable market demand for oil produced therefrom,"

for the reason that there was no evidence offered in this cause with relation to market demand, and that findings of the Corporation Commission upon evidence in that connection offered before the Corporation Commission, but not in the record in this cause, can not be by this Court used as evidence of ultimate facts, and that any finding that this Court may make with reference to matters that were wholly before the Corporation Commission must of necessity be limited solely to a finding of what the Corporation Commission did so find;

(c) That the plaintiff makes the same objection to the entire finding in the concluding paragraph of No. XXII, for the reason that the whole of the same represents an effort to have this Court find as facts, matters that are outside the record here, upon the assumption that the Corporation Commission having so found, this Court is upon that fact alone required to find likewise;

The plaintiff objects to the Defendants' Proposed Special Finding No. XXIII, for the following reason: The failure to include after the words "as nearly as", and before the words "could be done", third line from the bottom of said paragraph, the words, "the Corporation Commission found";

The plaintiff objects to the Defendants' Proposed Special Finding of Fact No. XXIV, in the following particulars:

(a) That this Honorable Court should do no more than find that there was at the times the orders in question were made and entered, an actual overproduction of crude oil in excess of market demand in Oklahoma and throughout [fol. 212] the oil producing states of the United States, and particularly insofar as Oklahoma be concerned, in the flush Oklahoma City pool;

(b) That the actual overproduction in the respective areas thereof, and at the respective times herein mentioned,

constituted an emergency that required conservation of the natural resources of the State;

(c) That the evidence in this cause does not warrant a finding that adequate gas-tight steel storage above ground was neither available nor possible of construction as the flush fields were being over-developed, with which to care for such overproduction, but that in any event crude oil within the State of Oklahoma will not go into open earthen storage or be otherwise physically wasted. Corporation Commission Order No. 5437, of February 10, 1931, plaintiff's Exhibit "33", record page 281;

(d) * * *

(e) That this Honorable Court can do more than find that accordingly it was necessary in order to prevent the physical waste of petroleum and natural gas as irreplaceable and natural resources of the State of Oklahoma, and in order that the same might be conserved for the ultimate use of the greatest number of people of the State that the production within said flush and semi-flush pools within the State should be restricted in the interest of conservation, under such regulations as would prevent only the physical waste of any part of such natural resources;

Plaintiff objects to that part of paragraph 10 of Defendants' Proposed Special Findings No. XXV, which reads as follows:

"The Court finds that a gauge for a longer period, or a gauge of all the wells in the Oklahoma City field at the same time with all wells open to full production, would be physically impossible",

together with concluding paragraph of such Special Finding No. XXV, which reads as follows:

[fol. 213] "The court finds from the evidence in this case that this method of arriving at the potential is justified by the circumstances and is reasonable and that since it was applied alike to all wells it has not resulted in discrimination as between producers or between pools",

for the reasons:

(a) That such findings are not supported by the evidence;

(b) That the taking of an actual gauge in Seminole and a calculated gauge in Oklahoma City, is not justified by the circumstances, is unreasonable, and does result in discrimination between those two pools;

That to take an actual gauge of any well in the Oklahoma City field would require the opening of offset wells in the same producing sand only for the period of time in which such gauge was being taken, and that all of the finding proposed by defendants concerning the great loss that would be incident to opening the entire field simultaneously while a gauge of a particular well would be taken, should be without consideration in this Honorable Court. As illustrative of the contention, let it be assumed that a well in the Wilcox sand is about to be gauged, how could any well in the Johnson or School Land sand be in anywise concerned therewith?

That this plaintiff requests this Honorable Court to find, upon the contrary, that the method of the taking of the potential of the wells in the Oklahoma City field was so designed in order that fictitious potentials would be created, and thereby build up for the producing companies represented in principal ownership thereof, an adequate supply of crude oil at all times, and at the same time enable the greater area of that field, in the producing horizon known as the Arbuckle lime, to produce wells in that area upon practically a full-time basis to make the percentage of the allowable production thereof;

That from all of the evidence offered in this connection, [fol. 214] this Honorable Court should find that the method of taking potentials in the Oklahoma City field did discriminate between owners of wells in the respective producing horizons in that field and did discriminate against the Oklahoma City field and in favor of the Seminole area;

Plaintiff objects to that part of Defendants' Proposed Special Finding of Fact No. XXVI in the following particulars:

(A) To that part of paragraph two thereof wherein it is said that:

"Each and all of said appointments were consented to by the Governor expressed in writing,"

for the reason that the present Governor of the State has not at any time consented in writing or otherwise, to any of said appointments, notwithstanding he has been continuously in office since the second Tuesday of January, 1931;

(b) Plaintiff requests, in conformity with the evidence, that following the words "all producers", and before the words "are permitted", third line from the bottom of the fourth paragraph in said Defendants' said Proposed Special Finding No. XXVI, the words, "in the Seminole area only" be added to such finding;

(c) To that part of paragraph five of said proposed Special Finding of Fact, wherein the following language is used:

"are paid by voluntary contributions of a great majority of the producers in the Oklahoma City field",

inasmuch as the testimony of the witness, McLennon, record page 204, reveals that but twenty out of about fifty producers in said field contribute to such fund;

(d) To that part of paragraph six, wherein this Honorable Court is requested to find that

"there have been two sessions of the Legislature of Oklahoma, one beginning in January, 1929, the other in January, 1931, and the practice referred to in said special find-
[fol. 215] ing has not been prohibited by the Legislature, and no funds otherwise provided for the payment of such agents",

for the reason that the Court might with equal propriety find that there were a number of bills offered in the Legislature to repeal the entire bill until which all of the so-called proration orders were made, other bills were introduced to modify the same, some to amend, and some to destroy, that hearings were held, arguments pro and con were made, and out of all of the effort came nothing;

(e) To that part of the same paragraph which finds that the "umpires are not officers of the State of Oklahoma", for the reason that by the terms of the law, such umpires are officers of the state and as such required to take an oath of office, which the record in this case discloses that the said Ray Collins has not done;

(f) To that part of the last paragraph of said Special Finding to the effect that the plaintiff has not "suffered any injury by reason thereof", which is an ironical finding, in view of the language employed immediately antecedent thereto; that Corporation Commission Order No. 5445, Plaintiff's Exhibit No. 33, record page 281, reveals that this Plaintiff was compelled to go before the Corporation Commission and conduct a long expensive hearing to be permitted to take a potential upon two of its wells, which arbitrary requirement was the result of a manifestation of the spleen and czaristic powers of the so-called umpire, Otto Bradford, whose arbitrary stand in the matter was ultimately overruled by the Corporation Commission, but nevertheless evidences an unfair attitude toward this Plaintiff, and does tend to build up a system that has no place in a country of free institutions;

[fol. 216] Plaintiff objects to Defendants' Proposed Special Finding No. XXVII, in the following respects:

(a) To that part of paragraph one thereof, wherein it is stated,

"that the said pools were not all served in common by the same pipelines and purchasers",

for the reason that the Seminole area and the Oklahoma City area were served by six major pipeline companies operating in both fields and that said pipeline companies so serving both fields owned 63.57 of the total pipeline capacity in the Seminole field, and at the same time owned and controlled 68.75 percent of the Oklahoma City field (See Plaintiff's Exhibits "16" and "17"); that the six pipeline companies referred to are the Empire, affiliated with the I. T. I. O., Oklahoma Pipeline Company, affiliated with Carter, a subsidiary of the Standard of New Jersey, Prairie, Magnolia, Stanolind, and Shell;

(b) To that part of paragraph one thereof, wherein it is stated:

"That the reasonable market demand for certain of them was greater in proportion to the potential production thereof than in the case of others",

for the reason that the evidence does not warrant such finding, inasmuch as gravity of oil and the ultimate recov-

ery of gasoline and other content therefrom are the only factors that determine market demand therefor, when two producing fields that are practically seventy percent served by the identical pipelines are being considered by a prospective purchaser;

(c) To that part of paragraph one thereof, wherein it is stated:

"The Seminole area is in a more favored location with reference to the long established, large inter-state trunk pipelines than is the Oklahoma City field, and naturally has a larger market demand",

for the reason that the evidence does not warrant such [fol. 217] finding inasmuch as market demand in any oil field does not depend upon that oil field's proximity to the trunk line, but rather upon the factor of quality of product and a pipeline therefrom to the trunk line;

(d) To that part of paragraph one thereof, wherein it is stated that:

"The Commission and also Umpire Collins and the so-called State Wide Advisory Committee (appointed by producers) have endeavored to induce the purchasers of crude oil to increase the amount of their purchases from the Oklahoma City field,"

for the reason that the evidence does not warrant such finding; and in this connection, we quote from the Corporation Commission Order No. 5437, of February 10, 1931, Plaintiff's Exhibit "33", record page 281:

"Thus those desiring immediate opportunity to market an increased amount of crude petroleum generally favor an increase in allowable takings under proration, whereas those more anxious to preserve the market stability and to protect interests elsewhere generally favor the maintenance of the present percentage of allowable takings from the Oklahoma City field and the least possible market competition." * * *

"The Oklahoma City field has been prorated until its production has been reduced to the minimum, now approximately 80,000 barrels. Some of the chief producers in

this field have made little or no attempt to market their crude petroleum, hoping for a day when the production generally would have so declined or have been so taken care of as to bring about a greater or more advantageous market for the Oklahoma City field."

(e) To that part of paragraph one thereof, wherein it is stated that,

"These circumstances justify and have necessitated a larger percentage of allowable production in the Seminole area than that in the Oklahoma City field,"

for the reason that the evidence does not warrant such finding, and the circumstances recounted in said special finding of fact are not the circumstances upon which the Corporation Commission have relied in its allocation of market demand;

(f) To all of paragraph two thereof, for the reason that the evidence does not warrant such finding, and upon the [fol. 218] contrary, the Corporation Commission in its Order No. 5437, of February 10, 1931, Plaintiff's Exhibit "33", record page 281, did specifically find that,

"The Oklahoma City field, the evidence indicates, is being discriminated against. It is our duty, if possible, to give those who have oil to sell an opportunity to dispose of it through so regulating proration as not to shut off the markets offered."

Plaintiff objects to that part of Defendants' proposed Special Fndings of Fact No. XXVIII, in the following particulars:

(a) To that part of paragraph one thereof, which reads as follows:

"That none of the Orders of the Commission have been made and entered for the purpose of fixing or maintaining the price of crude oil, or that the orders have had that effect",

for the reason that the evidence does not warrant such finding, and upon the contrary sustains plaintiff's conten-

tion that the orders of the Commission as entered, without regard to the intention thereof in such entry, have had the effect of endeavoring to fix and seeking to maintain the price of crude oil and this Honorable Court should so find;

(b) To that part of paragraph one thereof, which reads,

"There was no evidence introduced at the trial of this cause showing, or tending to show, that the orders of the Commission were intended to fix or control the price of crude oil",

for the reason that it is Plaintiff's contention that the greater portion of the testimony offered in this cause sustains the contrary statement, and this Honorable Court is requested to specifically so find;

Plaintiff objects to Defendants' Proposed Special Finding of Fact No. XXIX, for the following particulars:

(a) That the subject matter thereof has already been entirely covered in Defendants' Proposed Special Finding [fol. 219] of Fact No. X;

(b) That said proposed finding, in its entirety, is unwarranted by the evidence;

(c) That said finding is but a categorical statement of the theory of proration as practiced in Oklahoma, and does not have for its background conservation of the natural resources of the state, in the prevention of the physical waste, whether upon the surface or underground;

Plaintiff objects to that part of Defendants' Proposed Special Finding of Fact No. XXX, in the following respects:

(a) To that part of paragraph one thereof, which states that,

"The orders, rules and regulations do not operate to prevent or restrict the sale or transportation in interstate commerce of any oil produced,"

for the reason that the same is not warranted by the evidence, and upon the contrary, a burden upon interstate commerce in the transportation and marketing of crude

oil so produced in the State of Oklahoma, is so imposed by said orders, rules and regulations, and this Honorable Court is specifically requested to so find;

(b) To that part of paragraph one, which states that,

"There is no evidence that the Commission intended by their orders or rulings to limit the amount of oil entering interstate commerce for the purpose of controlling the price of crude oil or its refined products,"

for the reason that the same is not warranted by the evidence, and that upon the contrary the rules and orders of the Commission without regard to the intention in the promulgation thereof, have had the effect of imposing such burden upon interstate commerce, and as a result thereof have enabled the major producers in the Oklahoma City and Seminole areas to control the price of crude oil produced therein, and to control upon the market the price of the refined product to be obtained therefrom, and this [fol. 220] Honorable Court is specifically requested to so find;

The Plaintiff requests this Honorable Court to add to Defendants' requested Proposed Special Finding of Fact No. XXXI, the following:

"That on June 13th, 1931, this Court entered its order permitting the Plaintiff to produce from its wells in the Oklahoma City field now drilled or hereafter to be drilled, 10,000 barrels of crude oil per day, conditioned upon the giving of a bond in the sum of $200,000.00, that the Plaintiff would pay any damages that may finally be adjudged to have accrued to any person by reason of any violation or violations by the Plaintiff of such proration order or orders, if any, which may be adjudged finally to have been sustained, in the event such proration order or orders shall be ultimately held to have been valid;

That thereafter, on the 22nd day of June, 1931, the Plaintiff did file with the Clerk of said Court, its bond as set forth on pages 123 and 124 of Plaintiff's Third Amended and Supplemental Bill of Complaint, as finally filed by leave of Court in this cause, and that commencing with the 23rd day of June, 1931, the Plaintiff did produce oil in conformity with said order from its wells in the Oklahoma City

field to the extent of approximately 10,000 barrels per day;

That on the 5th day of August, 1931, upon the conclusion of the argument in this cause and the announcement of the Court's opinion, the said order of June 13, 1931, permitting the Plaintiff to so produce oil within the terms of said order and the bond given thereon, was vacated, set aside and held for naught, to all of which the Plaintiff in open court did then except and exception was allowed."

Respectfully submitted.

H. G. McKeever, Harry O. Glasser, Edgar A. DeMeule, Geo. A. Ramsey, Counsel for Champlin Refining Co. Of Counsel: Nathan Scarritt, Van Stewart, Roy Elam, H. H. McKeever, Garrett Logan, Villard Martin, E. S. Champlin.

[File endorsement omitted.]

[fol. 221] IN UNITED STATES DISTRICT COURT

[Title omitted]

REPLY OF DEFENDANTS TO PLAINTIFF'S OBJECTIONS TO DEFENDANTS' SUGGESTED SPECIAL FINDINGS OF FACT—Filed Aug. 31, 1931

Counsel for defendants received through the mail on this, the 24th day of August, 1931, the "Objections to Defendants' proposed Special Findings of Fact". It is obvious that few, if any, of the objections have any merit whatever, in view of the memorandum opinion of the majority of the judges constituting this court. It may expedite the disposition of the matter if a brief explanation is made in connection with certain specific suggested findings to which objection has been made.

Defendants' Suggested Finding No. IV

The only objection made to this finding is a statement of the potential production of plaintiff's wells McCalep No. 1, Naden No. 1, and Seal No. 1 and No. 2. Since it is admitted by all parties that to multiply by six the amount of oil produced during the four-hour open flow of wells in the Oklahoma City field while all neighboring wells are shut

in gives a greatly exaggerated daily potential production for each well and for the field as a whole, and since the [fol. 222] Corporation Commission in its order No. 5437 dated February 10th, 1931, prescribed the method of calculating the daily average potential based on the four-hour gauge that is set forth in suggested finding No. 14, and since, according to the testimony of plaintiff's witness, Clifton, the result thus arrived at is substantially correct (Record 43 to 45), and in order to avoid confusion, we thought it best to state the daily average potential production of the Oklahoma City field and of any particular well therein in terms of the result of the method of computation prescribed by the Commission on February 10th, and since followed by it in determining the potential production of the field and the basis on which the percentage of daily allowable production is prescribed in each of the orders promulgated since that date. In our judgment, by using the same method of calculating the daily potential from the four-hour gauge throughout the findings, confusion is avoided rather than created, and more accurately reflects the potential production based upon an actual open flow of all wells for twenty-four hours continuously, if it were possible to gauge the wells in that way.

Defendants' Suggested Finding No. V

This finding states the facts with reference to the plaintiff's ability to transport oil from the Oklahoma City and Greater Seminole fields and its storage capacity at its refinery, and that it has and is able to utilize an amount of oil in excess of that it is allowed to produce under the orders of the Corporation Commission without physical waste. We can not see that the cost of steel storage or the waste therefrom has any bearing on that issue. This suggested finding covers the allegations of paragraph XXV of the third amended bill. In addition to the facts found above [fol. 223] to be true, it was further alleged in that paragraph that closing in or pinching in the plaintiff's wells would cause water to enter the oil and gas and result in irreparable damage. There was absolutely no evidence offered to sustain that allegation. It being one of the issues raised by the pleadings, we think it proper that an appropriate finding be made thereon.

Defendants' Suggested Finding No. VI

(a) We cannot see the materiality of this objection.

(b) The statement of potential production of the Greater Seminole field as of June 15th, 1931, is taken from plaintiff's Exhibit No. 14 prepared by Mr. Collins, who stated that the information contained therein was accurate and correct to the best of his knowledge. (Record No. 124) The rule sand regulations of the Corporation Commission prescribing the method by which the gauge should be taken in the Seminole field and the method of estimating the potential in certain pools by the application of the decline curve is set forth in paragraph III of the decretal portion of the order No. 5413 dated December 30th, 1930. (Plaintiff's Exhibit No. 33)

(c) The number of the non-integrated producers in the Seminole field, the number of wells owned by them, the percentage to the whole, their potential production and the percentage to the whole, as stated in this suggested finding, is a matter of simple calculation from plaintiff's Exhibit No. 14. The accuracy of the figures given is not questioned. It is suggested that certain companies listed as non-integrated in this exhibit are known by the public to be integrated producers. It may be that some of the companies listed as non-integrated producers in the Seminole field do [fol. 224] own refineries and do have pipe line connections from their refineries to other fields. But the deduction from this exhibit and the actual fact is that the companies named by the plaintiff as being known to the public as integrated producers do not have any pipe lines extending into the Greater Seminole field owned or controlled by them, and they are entirely dependent upon other companies to purchase and transport the oil produced by them in the Seminole field. The exhibit is the only evidence in the record as to which companies having production in the Seminole field are able to transport the same through pipe lines owned or controlled by them to refineries operated by them or associated companies. As a matter of fact, the exhibit is correct so far as the Greater Seminole field is concerned.

(d) The objection to the statement of the total daily average potential production of the Oklahoma City field

has been covered above. The potential as stated in the suggested finding is according to the method of computation prescribed by the Commission. We do not understand why plaintiff's counsel object to a statement of the potential which its own witness believes to be substantially correct, unless the statement of a greatly exaggerated potential arrived at by multiplying the four-hour gauge by six would have a tendency to show that purchasers are discriminating against the Oklahoma City field in favor of the Seminole field. Certainly in the interests of justice, when the potentials of the two fields are compared for any purpose, the basis of comparison should be the same as far as practicable. There is nothing absurd in the finding that the Sinclair Oil & Gas Company is a non-integrated producer in the Seminole and an integrated producer in the Oklahoma City field. The reason is that the Sinclair Oil & Gas Company through its subsidiaries has pipe line connections [fol. 225] with its wells in the Oklahoma City field while it has none with its wells in the Seminole field. Neither the Skelly Oil Company nor the Indian Territory Illuminating Oil Company has pipe lines extending into the Oklahoma City field, while C. C. Julian and the Century Oil Company have their own pipe lines extending from their wells in the Oklahoma City field to their own refineries. The suggestion that the court should find that the proration orders are a price-fixing arrangement instead of for the purpose of preventing waste and the protection of the co-equal rights of those having the privilege of producing from the Oklahoma City field has been determined by a majority of the court contrary to plaintiff's contention. Naturally, the special finding of fact will be in accordance with the memorandum opinion of the court.

Defendants' Suggested Finding No. VII

(a) The suggested finding states the exact fact. The interpolation proposed by plaintiff would not be proper.

(b) The statement here objected to is taken from the memorandum opinion of the court.

(c) The paragraph here objected to is likewise taken from the memorandum opinion of the court, and is a statement of the full truth.

(d) We see no point in this objection. All refineries necessarily have some storage facilities in order to assure themselves of a constantly available supply of crude oil and so that they may not be dependent upon pipe line deliveries from day to day.

(e) The finding here objected to simply recites the conditions actually existing at the time of the enactment of the law and indicates one of the evils the legislation in ques- [fol. 226] tion was designed to prevent, an evil which under the same conditions would occur again unless restrained. True it is that the Commission by its order No. 5437 prohibited earthen storage. But, in denying a producer the right to resort to earthen storage, the Commission at the same time under the power conferred by the law protected him against drainage by limiting the production from the various pools to the reasonable market demand therefrom. The Commission not only prohibited earthen storage but at the same time removed the necessity therefor. Like the cure for disease, the best remedy for an evil is to remove the cause.

(f) This has been disposed of in connection with (e).

Defendants' Suggested Finding No. X

(a) The memorandum opinion of the court disposes of the contention that Section II is a vital part of the authority conferred upon the Commission to make the orders in question. The court has held that that section is not a necessary or inseparable part of the Act.

(b) The abstract of evidence referred to is precisely the same as that submitted to the court in the application for a temporary injunction. The majority of the court then found, as upon the present hearing, that the evidence was sufficient to support the findings of fact of the Commission.

Defendants' Suggested Finding No. XV

In this finding, as in all others pertaining to the orders of the Commission, we thought it important to state only the substance of the decretal part of the orders and that the reasons therefor were immaterial.

[fol. 227] Defendants' Suggested Finding No. XXI

(a) Objection is made to this court finding the same facts found by the Commission, as set forth in the portion of order No. 5369 quoted, for the reason that there was no original evidence before this court to support such finding. We think counsel is in error. The testimony of J. R. McWilliams and of E. F. Guidinger, as well as other witnesses, clearly supports every fact recited. Indeed, it may be said that the facts recited are so much a matter of common knowledge that the court would be warranted in taking judicial notice thereof. The rule is well established that the presumption is that orders such as herein questioned are reasonable and valid and the burden is upon the one assailing them to establish their invalidity. The presumption is that evidence taken by the Commission supports the findings of fact made, and the one who asserts that the findings are not so supported has the burden of proving it by introducing all the evidence the Commission had before it. We think that, in the absence of any evidence showing that any finding of fact of the Commission is erroneous, this court would be warranted in finding the existence of such fact without any additional testimony; however, on the questions here, there was original evidence before this court supporting each and every statement quoted from the findings of the Commission.

(b) That the curtailment of production of oil will tend to curtail the production of casinghead gas is a self-evident fact. The uncontradicted testimony in this case is that the casinghead gas in the Oklahoma City field is valuable for the extraction of its gasoline content, and the residue for domestic uses as natural gas, and that the capacity of the present casinghead gasoline plants in the Oklahoma City field is sufficient to take care of the casinghead gas being produced under existing orders of the Commission, and [fol. 228] that the production of any additional amount of gas would necessarily result in the waste thereof, and its valuable gasoline content. (See testimony of the witness Dow.) According to the testimony of the witnesses McWilliams and Guidinger, under the existing orders permitting the operation of the wells in the Oklahoma City field under the percentage of potential production plan instead of on

the time basis as originally practiced in the field, each operator can so regulate the production from his well as to utilize the best oil-gas ratio and thereby conserve the gas pressure.

Defendants' Suggested Finding No. XXII

The observations made under No. XXI (a) are applicable to the objection made to this suggested finding.

Defendants' Suggested Finding No. XXIV

The objection made to this suggested finding seems to be that the power of the State and of the Commission under the Act in question is limited to the prevention of physical waste of oil and gas as a natural resource, and does not extend to the regulation of production for the purpose of protecting the co-equal rights of the owners of the surface over a common pool. The majority of the court have rejected this theory of the law, and it neses-sarily follows that the objections to this finding are not tenable.

Defendants' Suggested Finding No. XXV

The portion of the finding objected to is clearly supported by the evidence. The plaintiff's witness Clifton testified that after a five-day wide open flow of all the wells in the Oklahoma City field, in his opinion the daily production would be about two and one-half million barrels in twenty-[fol. 229] four hours. The total pipe line capacity of the Oklahoma City field is only 316,000 barrels per day, and the total capacity of railroad loading racks is only 123,000 barrels per day (Plaintiff's Exhibit No. 17). The Sinclair Oil & Gas Company is the only operator that has a very great amount of storage facilities (Testimony of John H. Wiggins, R. 93.) The reason for taking the four-hour gauge with all of the neighboring wells shut in is that but few producers were equipped with sufficient lease storage to take care of more than the production of one well during that period of time, and in order that the four-hour gauge might be taken by all wells under similar conditions, the rules provided that the neighboring wells should be shut in. Therefore, the suggested finding that a gauge in the

Oklahoma City field for a longer period or with all the wells open to full production at the same time would be a physical impossibility is clearly sustained by the evidence. Since the gauges of all the wells in the Oklahoma City field were taken under precisely the same circumstances, it follows that the method could produce no discrimination as between wells in that field. Since the production in the Oklahoma City field is regulated on the basis of the market demand for oil from that field and the production from the Seminole and other areas is regulated on the basis of the market demand for oil from such areas, it is immaterial whether the potentials in different fields are taken in the same way. There is absolutely no evidence to warrant the request of the plaintiff that the court find that the method of taking the potentials in the Oklahoma City field was designed to create fictitious potentials for the benefit of any certain producers.

[fol. 230] Defendants' Suggested Finding No. XXVI

(a) The last order appointing umpires and designating operators' committees for the various prorated pools was made by the Corporation Commission's journal entry No. 1835 on January 9th, 1931, and is a part of plaintiff's Exhibit No. 33. Attached to it is the written consent and approval of W. J. Holloway, then Governor of Oklahoma. Each appointment of an agent prior thereto, shown in Exhibit No. 33, was likewise consented to and approved by the Governor of the state in office at the time of the appointment. We do not know of any rule of law requiring the succeeding governor to re-approve such appointments.

(b) The Interpolation suggested is unnecessary since the context clearly shows that the producers in the Greater Seminole area are the ones who contributed the payments of Mr. Collins' salary.

(c) While on the basis of production, the vast majority of the Oklahoma City producers contributed to the payment of Mr. Bradford's salary, still from the standpoint of numbers of producers, the majority perhaps did not. In order that the statement here criticized may be precisely accurate, it might be well to strike therefrom the words "of a great majority."

(d) The fact of sessions of the Legislature occurring during the time that the umpires' salaries were paid by voluntary contributions of producers was adverted to by the court in its memorandum opinion and constitutes a proper finding.

(e) Under the terms of the law, the umpires are not officers; they are merely agents of the Commission. States and governments have numerous employees who are not, in the proper sense of the word, officers. The provision of the Act authorizing the appointment of agents with the consent of the Governor nowhere provides that an oath of office is required.

[fol. 231] (f) It is a fact, whether ironical or otherwise, that the evidence wholly fails to show that the plaintiff suffered any injury by reason of the method of compensating umpires. It was not even contended in the brief that they had been unfair or had practiced any fraud. At most, it was simply contended that the system afforded a temptation for that end. We do not recall a scintilla of evidence that order No. 5445 was the product of a long, expensive hearing, or that the umpires had acted improperly. The fact seems to be that under the then existing rules and regulations by reason of alleged overproduction in October, the plaintiff was not entitled to open his wells for taking a new potential, and that he applied to the Commission and it granted a modification of the rule so that a new potential could be taken of the plaintiff's overproduced wells as a basis of calculating the amount it had overproduced.

Defendants' Suggested Finding No. XXVII

(a) The evidence discloses that while some pipe line companies have connections in both the Seminole and Oklahoma City fields, yet there are other companies who have connections only in the Seminole field, and still others who have connections only in the Oklahoma City field. Therefore the statement criticized in this paragraph is exactly correct.

(b) "Market demand," as we understand it, means the total number of barrels of oil that all purchasers and other users of oil produced from a given pool desire to purchase or take during a given period. It is true that on account of the difference in quality of the oil, some may desire to pur-

chase or take more oil from one pool than from another, which is a factor in the variance in the market demand from different pools.

[fol. 232] (c) The statement here criticized is warranted by the uncontradicted testimony of the witness Ray M. Collins (R. 180).

(d) The statement here criticized is warranted by the uncontradicted testimony of Mr. Collins (R. 163-164).

(e) Counsel for plaintiff erroneously assumes that the Commission allocates market demand. The evidence discloses that it does nothing of the kind. It simply ascertains from the evidence what the existing market demand is from each pool, and what the demand will probably be during the period covered by the respective orders. The Commission in its several orders simply allocated to each pool the amount of allowed production which the testimony disclosed at the time was the amount of the market demand therefrom.

(f) The discrimination referred to in the excerpt from Commissioner Walker's opinion of February 10th, 1931, is discrimination practiced by some purchasers. He indicated that in his opinion such purchasers could and should increase their purchases in the Oklahoma City field. There is not a scintilla of evidence that the Commission practiced any discrimination against the Oklahoma City field; in fact, all of the Commissions orders indicate a desire to find a greater outlet for oil from the Oklahoma City field and to accommodate the production thereto.

Defendants' Suggested Finding No. XXVIII

(a) There is not a scintilla of testimony that it was the intention of the Commission by its rules and regulations to effect or maintain the price of oil. The only testimony bearing upon this is a recital in one of the Commission's orders to the effect that such was not their intention, and that any effect upon price was merely incidental. It certainly can not be said that the effect of the order was to fix or maintain prices. Exhibit No. 32, prepared and introduced by plaintiff, shows a constant decline in the [fol. 233] price of crude oil from $2.00 in the year 1927,

when the first proration orders were made, down to 35¢ at the time of the trial.

Defendants' Suggested Finding No. XXIX

This finding has reference to the allegations of the bill with reference to each of the orders, that the same were entered without any evidence tending to support the same. The only evidence before the Commission that was offered on this trial was an agreed abstract pertaining to the subject of waste, which abstract was also before the court upon the application for a temporary injunction. In the opinion denying the temporary injunction, the court found that this abstract showed that there was sufficient evidence of waste and threatened waste before the Commission to warrant the findings of fact made thereon.

Defendants' Suggested Finding No. XXX

This finding has reference to the alleged interference with interstate commerce.

(a) The evidence is too clear to admit of the possibility of a doubt that the orders of the Commission pertain to the production of oil, and do not have any bearing upon the disposition of oil after it is produced. The statement here criticized is absolutely accurate.

(b) This is but a repetition of the same objection made elsewhere.

Defendants' Suggested Finding No. XXXI

This suggested finding has reference solely to the steps taken by state authorities to enforce the provisions of the orders against the plaintiff, and fully and accurately recites all that has been done in that connection. We do not see that the addition requested by plaintiff has any bearing on the propriety of the action of the Attorney General [fol. 234] or of the validity of the so-called penalty sections.

We respectfully submit that the findings suggested by counsel for the defendants fully and accurately cover all of the issues of the case. Each and every statement therein contained is supported by the evidence. The statement

upon any question of fact which may be said to be controverted is in accordance with the memorandum opinion of the majority of the court. We feel that the only criticism of the suggested findings that is at all warranted is that they go into too much detail, but in order that every question that may be considered as material would be covered by the findings, we thought it proper to amplify some of the matters more than seemed absolutely necessary. It was our hope that the findings would be so complete that it would be unnecessary for the Supreme Court to review any of the pleadings or the evidence, and that the findings would present a comprehensive and accurate statement of the case.

Respectfully submitted.

J. Berry King, Attorney General; Jess L. Ballard, Assistant Attorney General; W. P. Z. German, Jno. H. Miley, Special Counsel, for Defendants.

[File endorsement omitted.]

[fol. 235] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DENYING PLAINTIFF'S REQUESTED FINDINGS OF FACT—Filed Oct. 17, 1931

Now on this 11th day of September, 1931, came on for hearing the requested findings of fact made by the plaintiff and the Court being fully advised in the premises,

It is ordered that each and all of plaintiff's requested findings of fact be denied and disallowed, whereupon the plaintiff severally excepted to the refusal of the Court to give each of its requested findings of fact, which exceptions are hereby severally allowed.

Dated at Guthrie, Oklahoma, on the day and year first above written.

John H. Cotteral, Circuit Judge. Orie L. Phillips, Circuit Judge. —— ——, District Judge.

I dissent. F. E. Kennamer.

[File endorsement omitted.]

Vol. I

(PART 2)

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1931

No. 485

CHAMPLIN REFINING COMPANY, APPELLANT,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA AND PAUL WALKER, E. R. HUGHES, AND C. C. CHILDERS, ETC., ET AL.

No. 486

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA AND PAUL WALKER, E. R. HUGHES, AND C. C. CHILDERS, ETC., ET AL., APPELLANTS,

vs.

CHAMPLIN REFINING COMPANY

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

FILED OCTOBER 26, 1931

(36,299, 36,300)

(36,299, 36,300)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

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VOL. I

(PART 2)

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[fol. 236] IN UNITED STATES DISTRICT COURT

[Title omitted]

SPECIAL FINDINGS OF FACT—Filed Sept. 11, 1931

This cause pursuant to assignment for final hearing came on to be heard, and the respective parties appeared by their respective counsel, introduced their evidence on June 29th and June 30th, 1931, and an adjournment was taken in order that counsel might brief the case and prepare for the argument thereof. Thereafter and on August 3, 1931, the cause was argued before the court and at the conclusion thereof the case was taken under advisement. The opinion of a majority of the court was filed herein on August 5, 1931, and a dissenting opinion on August 12, 1931.

Having considered the evidence fully the court finds the facts specifically as follows:

[fol. 237] I

Plaintiff is a corporation organized and existing under and by virtue of the laws of the State of New Mexico and is a citizen of said State; and has been regularly admitted and licensed to do business in the State of Oklahoma, pursuant to the laws thereof; and was, at the commencement of this suit, and is now doing business therein with its principal office and place of business in the City of Enid, Garfield County, Oklahoma. At the commencement of this suit, on September 15, 1930, and prior to the 10th day of January 1931, the defendants Fred Capshaw, E. R. Hughes and C. C. Childers were the duly elected, qualified and acting Corporation Commissioners of the State of Oklahoma. On the 10th day of January 1931, the term of office of the defendant Fred Capshaw expired and he was succeeded therein by the defendant Paul Walker, who qualified as such on said date; subsequently an order was entererd in this cause permitting it to be continued and maintained against the defendant Paul Walker, as successor in office to the defendant Fred Capshaw. At the present time, the defendants, Paul Walker, E. R. Hughes and C. C. Childers constitute the Corporation Commission of the State of Oklahoma. The defendant J. Berry King is the duly elected, qualified and acting Attorney General of the State

of Oklahoma. The defendant Lewis R. Morris is the duly elected, qualified and acting County Attorney in and for the County of Oklahoma, State of Oklahoma. The defendants are all citizens of the State of Oklahoma, with their residences and domiciles in the Western Judicial District thereof. The matter in controversy herein is in excess of $3,000.00, exclusive of interest and costs; and arises under the Constitution and laws of the United States.

[fol: 238] II

Plaintiff has been since its incorporation and is now engaged in the business of producing and refining crude oil and transporting and marketing petroleum and its refined by-products and natural gas in intrastate and interstate commerce. It owns and operates an oil refinery at Enid, Oklahoma, with a capacity of 15,000 barrels of crude oil per day, in which it has an investment of $3,840,038.31. At said plant the plaintiff refines and manufactures gasoline, kerosene, lubricating oils, waxes and other by-products of different grades. It owns approximately 735 tank cars of the value of $1,295,202.21, which it uses in the distribution of its refined products, among its customers in Oklahoma, Texas, Colorado, Kansas, Arkansas, Missouri, Minnesota, Iowa, Nebraska, South Dakota, North Dakota, Wisconsin, Michigan, Illinois, New Mexico and California. Plaintiff controls and operates approximately 470 miles of pipe lines, representing an investment of $3,146,228.48, for transportation of oil and gas in Oklahoma and other states. Plaintiff owns and operates a pipe line for the transportation of crude oil from the Oklahoma City oil fields to its Enid Refinery (extended to the Oklahoma City field in September 1930) having a carrying capacity of 18,000 barrels of crude oil per day and costing approximately $600,000. It owns and operates approximately 263 retail gasoline filling stations and 256 wholesale gasoline stations in the states of Oklahoma, Kansas, Texas, Iowa, Colorado and Illinois, which it supplies from its Enid, Oklahoma, refinery. The investment of plaintiff in filling stations and marketing equipment, situated in Oklahoma being $1,738,731.40, and that out of Oklahoma being $1,357,950.48. Plaintiff sells products of its refinery located at Enid, Oklahoma, in the

state of Oklahoma and other states and transports the same from its refinery in Enid, Oklahoma, to points in Oklahoma and other states.

During the period from July 1st, 1928 to May 31, 1931, 65% by volume, and 70% in value, of the products of its Enid Refinery were transported from its refinery in Oklahoma to other states and sold therein.

[fol. 239] In addition to oil produced from its own wells, plaintiff purchased 4,660,000 barrels of crude oil in 1930 and 4,821,000 barrels in 1929 from other producers for use at its Enid refinery. Its purchases so far during 1931 have been less than in previous years.

[fol. 240] III

The plaintiff is the owner and holder of oil and gas leases covering tracts and parcels of land, as follows:

Lots 30, 31, 32, 33, 34, 35, (containing .48 of an acre of land, more or less,) and Lots 50 and 51, (containing .16 of an acre more or less), Block 2 of Roosevelt Place Addition to the City of Oklahoma City, Oklahoma, as shown by the recorded plat thereof.

Lots 23, 24, 25 and 26, Block Nine (9) Armourdale Addition to Oklahoma City, Oklahoma, same being a subdivision of the Northwest Quarter in Section Two (2), Township Eleven (11) North, Range Three (3) W. I. M., Oklahoma County, Oklahoma, containing ½ acre, more or less.

All of Lots 3 to 20, inclusive, in Block Six (6), and all of Block Five (5) of Compton Park Addition to Oklahoma City, Oklahoma, according to the recorded plat thereof, containing 5 acres, more or less, being located in the SW4. Sec. 2-11N-3W, Oklahoma County, Oklahoma.

All of Block seven (7) in Central Addition to Oklahoma City, Oklahoma County, Oklahoma, containing 4.07 acres, more or less, composed of fifty 25-foot lots.

All of Block Eight (8) in Central Addition to Oklahoma City, Oklahoma County, Oklahoma, containing 4.07 acres, more or less, composed of fifty 25-foot lots.

All of Block Fifteen (15) in Central Addition to Oklahoma City, Oklahoma County, Oklahoma, containing 3.91 acres, more or less, composed of forty-eight 25-foot lots.

All of Block Nineteen (19) in Central Addition to Oklahoma City, Oklahoma County, Oklahoma, containing 3.91

acres, more or less, composed of forty-eight 25-foot lots.

All of Block Twenty-two (22) in Central Addition to Oklahoma City, Oklahoma County, Oklahoma, containing 3.88 acres, more or less, composed of forty-eight 25-foot lots.

All of Block Twenty-three (23) in Central Addition to Oklahoma City, Oklahoma County, Oklahoma, containing 2.11 acres, more or less, composed of twenty-four 25-foot lots.

All of Block Eighteen (18), Schilling Addition to Oklahoma City, Oklahoma County, Oklahoma, containing 3.16 acres, more or less, composed of Thirty-six 25-foot lots.

All of Block Eleven (11) in Eckroat Addition to Oklahoma City, and all of Block Two (2) in Layman's Addition to Oklahoma City, Oklahoma County, Oklahoma, containing 3.95 acres, more or less, consisting of 44 lots,

and in what is generally known as the "Oklahoma City oil [fol. 241] field"; that it is also and has been for a long time the owner of oil and gas mining leases on the

East Half of the Southeast Quarter of the Northeast Quarter of Section 14, Township 7 North, Range 6 East, and an undivided one-half interest in the South Half of the Southwest Quarter of Section 9, Township 6, Range 6, all lying in Seminole County, State of Oklahoma,

and in what is generally known as the "Greater Seminole area".

And is also the owner of an oil and gas lease covering

The Southeast Quarter of the Southeast Quarter and the South Half of the Northeast Quarter of the Southeast Quarter of Section 25, Township 23, North of Range 4 West, Garfield County, Oklahoma.

[fol. 242] IV

Plaintiff has drilled and completed nine producing oil wells on its leases in the Oklahoma City Field, at an approximate cost of $1,250,000.00 and is now drilling one additional well thereon which will cost approximately $140,000.00.

Plaintiff has drilled and equipped nine oil producing wells on its leases in the Greater Seminole Field, at an approximate cost of $569,000.00.

Plaintiff drilled one of its wells, known as McCalep No. 1, in the Oklahoma City field on Lots 30 to 35, Block 2, Roosevelt Place Addition. The said well penetrated a sand known as the "School Land Sand Zone" and produces oil from four lenses thereof. The average recovery of oil from said sand will be 25,000 to 30,000 barrels per acre. The estimated amount of recoverable oil at the place this well is located will be 33,000 barrels per acre. The potential production of said well on March 4, 1931, according to a four hour guage then taken was 5,276.40 barrels per day, computed according to the Corporation Commission's revised formula hereinafter stated. According to a guage taken on April 1st, 1931, such potential production was 3,882.90 barrels. Production of oil from this well was commenced in September 1930, and prior to February 9, 1931, the plaintiff produced therefrom 28,664.43 barrels of oil. Subsequent to Feb. 9, 1931, and prior to June 13, 1931, it produced therefrom 214,682.76 barrels of oil. From June 14th to June 25th, 1931, it produced 11,162.07 barrels.

Plaintiff drilled another of its wells, known as Naden No. 1, on Lots 23 to 26, Block 9 Armourdale Addition. The said well penetrated the upper part of the Wilcox sand and the school land sand zone. The estimated amount of recoverable oil at that place is 27,000 barrels per acre. The potential production from said well computed according to the revised rules and regulations of the Corporation Commission from a four hour guage taken on March 4, 1931, was 5,585.54 barrels per day, and from a four hour guage taken on April 2, 1931, was 3,305.18 barrels per day. Production of oil from this well was commenced in September [fol. 243] 1930, and during that month the plaintiff produced therefrom 13,935.94 barrels. No oil was afterward produced therefrom until March, 1931. From March 1, 1931, to June 13th, 1931, the plaintiff produced from said well, 196,577.54 barrels of oil, and from June 14th, 1931 to June 25, 1931 (incl.) 15,399.56 barrels.

The plaintiff drilled two wells known as Seal No. 1 and Seal No. 2 on the lots in Block 5 and Block 6, Compton Park Addition. The said wells penetrated the school land sand zone. The estimated amount of recoverable oil at the location of Seal No. 1 is approximately 13,000 barrels per acre, and at Seal No. 2, 7,500 barrels per acre. The potential production of Seal No. 1 calculated according to the re-

vised rules and regulations of the Corporation Commission from a four hour guage taken April 13, 1931, was 146.96 barrels per day and of Seal No. 2, was 272.72 barrels per day. Production was commenced from said wells in March 1931, and until June 13th, 1931, the plaintiff produced from said two wells 153,392.24 barrels and from June 14th to June 25th inclusive 3,951.04 barrels of oil.

Subsequent to Feb. 9, 1931 and prior to May 25, 1931, the plaintiff produced from the said four wells last above mentioned approximately 300,000 barrels of crude oil in excess of the amount it was entitled to produce under the rules, regulations and orders of the Corporation Commission hereinafter referred to, promulgated pursuant to the Oklahoma Oil Conservation Act approved February 11, 1915.

The evidence does not show the potential production of the other wells of plaintiff in the Oklahoma City field or the amount of oil produced therefrom. Those wells were completed a short time before the trial.

[fol. 244] V

The plaintiff has pipe line facilities for transporting 18,000 barrels of oil per day from its wells in the Oklahoma City field to its Enid refinery, and adequate pipe line facilities for transporting the oil from its wells in the Greater Seminole field to its said refinery. It has gas tight, steel storage tanks at its refinery, with a capacity of 55,000 to 80,000 barrels each and a total capacity of 645,000 barrels. It has a market for its refined products. It has stored no crude oil in earthen storage and permitted none of that produced from its wells to run at large on the surface of the earth, and has not wasted any oil produced from its wells, and all the oil it can produce will be utilized for commercial purposes. There was no evidence that closing in or pinching in its wells in the Oklahoma City field will cause water to enter the oil and gas sand, or damage its wells, or result in waste of oil or gas.

[fol. 245] VI

There are many oil pools in the State of Oklahoma. They include the Oklahoma City Pool and the pools in the Greater Seminole Area or field.

The oil and gas producing area designated as the "Greater Seminole Area", covers a territory from 15 to 20 miles long by 8 to 10 miles wide. Oil and gas is found in eight or more distinct and separated pools within said area, all producing from formations of a similar character. None of said producing pools overlie any of the others. The first of the pools in this area was discovered in 1925. On June 15, 1931, there were 2,441 producing oil wells within that area with a potential production of 564,908 barrels per day, determined from gauges made under rules and regulations of the Commission. The land in each pool is owned in separate parcels by different persons, each having the right on his own land to drill wells and take oil and gas from the reservoir beneath. The various wells are separately owned and operated by 80 different corporations, partnerships and individuals, oil and gas lessees of the respective land owners; and sixty-two, or about 77% thereof, known as non-integrated producers, have no pipe lines or refineries of their own and are entirely dependent upon others who purchase and transport oil, for an outlet for marketing their oil production. These non-integrated producers own 894, or about 37% of the producing wells, with a potential production of 225,507 barrels of oil per day, or about 40% of the total potential of the area. Five companies, owning 196 wells with a potential production of 76,806 barrels, have pipe lines or refinery connections affording a partial outlet for their production, but are in the same situation as the non-integrated producers in disposing of the remainder of their production. Nineteen different companies own, or control through affiliated companies, pipe lines extending into this area, with a daily carrying capacity of 468,200 barrels, most of whom from time to time purchase oil produced in said area from other producers therein in addition to that produced by themselves or affiliated concerns; production from the several pools [fol. 246] in that area has been regulated by orders, rules and regulations of the Corporation Commission entered and promulgated under the Oklahoma Oil Conservation Act for the purpose of preventing waste and protecting the co-equal rights of the several owners of the surface since August 1, 1927, by limiting the production of oil from each well to that proportion of its potential produc-

tion which the reasonable market demand for oil from the pool in which it is located bore to the total potential production of all the wells producing from such pool.

The oil and gas producing area known as the Oklahoma City field lies about 65 miles West of the Greater Seminole field. It covers an area extending approximately six miles North and South and three miles East and West. The North part of the area extends into the corporate limits of Oklahoma City. The portion of the area within such limits and adjacent thereto has been subdivided into lots and small parcels, some of which are only 25 feet wide by 140 feet long. All of plaintiff's leases in said field are in this townlot portion of the field. Oil was discovered in the Oklahoma City field in December, 1928, and the area has since been rapidly developed. Oil and gas is being produced in that area from four different zones, which lie more than 6,000 feet below the surface and are known as the Wilcox Sand, the School Land Sand, the Johnson or Kinter Sand, and the Arbuckle Lime. In parts of the area two or more of these producing formations overlie each other, and at many points the wells penetrate all of such overlying formations, and are capable of producing from all so penetrated. The superincumbent surface of each producing zone or zones is owned in separate parcels by many different persons, each having the right to drill into and produce oil and gas from the reservoir beneath. The wells in this field or pool are from 6,200 to 6,550 feet in depth. The cost of drilling and equipping a well in this pool varies from $130,000.00 to $150,000.00.

On June 15, 1931, there were 746 producing oil wells in the Oklahoma City field, having a total potential produc- [fol. 247] tion of 2,987,993 barrels, calculated according to the Corporation Commission formula. These wells are owned and operated by 53 different corporations, partnerships and individuals, (oil and gas lessees of the respective land owners), of which 36 are non-integrated, and 8 are partially integrated. These 44 non-integrated and partially integrated producers own and operate 650 of the wells, or 88% of all, and have a potential production determined according to the revised formula of the Commission, of 2,742,079 barrels per day or about 90% of the total potential production. Ten different producing companies own, or control through affiliated companies, pipe lines extending

into this area, with a carrying capacity of 316,000 barrels of crude oil per day. Most of these companies from time to time purchase oil from the producers thereof and transport the same from this field in addition to that produced by themselves or affiliated companies. Production of oil from the Oklahoma City field has been regulated by orders, rules and regulations of the Corporation Commission made under said Act for the purpose of preventing waste and protecting the co-equal rights of the several owners of the surface and their respective lessees continuously since October 15, 1929, by limiting the production from each well to that proportion of its potential production which the reasonable market demand for oil from said field, as found from the evidence before it to exist from time to time, bore to the potential production therefrom at the time.

[fol. 248] VII

The production of oil and gas in excess of marketing facilities and in excess of market demands results in above ground storage. At and prior to February 11, 1915, the date of the approval of the statute in question, as disclosed by the orders of the Commission entered in 1914 and 1915, the production of oil and gas in excess of transportation or marketing facilities or in excess of market demands resulted in large amounts of such storage in earthen tanks on the surface of the land with resultant waste, through seepage and by reason of heavy rainfalls carrying it away and by fires caused by lightning; and, when not wholly lost, in loss by evaporation of the most valuable constituent elements thereof, that is, much of the natural gasoline content thereof. It is a well known fact in the oil industry that oil can be best conserved by holding it in storage in the natural underground reservoir.

It is established by the evidence that to permit oil wells in flush or semi-flush pools to flow wide open for a considerable length of time results in the use of an excessive amount of gas pressure, and uneconomical and wasteful use of gas energy in recovering and lifting the oil and a tremendous loss in ultimate recovery. The proper and economical utilization of this energy is of particular importance in a pool such as the Oklahoma City pool where the wells are of tremendous depths and the cost of artifi-

cially recovering and raising the oil will be unusually great.

Before the passage of the statute here in question many oil pools of considerable consequence had been discovered in Oklahoma, notably among them being the Glen Pool about 1906, the Healdton Pool about 1910, and the Cushing Pool about 1912. Then, as now, there were a few operators, who, in addition to owning producing leases in these pools, had their own transportation, storage and refining facilities, and some of them were buyers of oil produced by others; but the great majority of the producers had neither storage, transportation, nor refining or marketing facilities of their own. The former are now referred to as "integrated producers" and the latter as "non-integrated producers." It was then the practice of the integrated pro- [fol. 249] ducers to make excesssive drafts upon the common source of supply through their own wells upon their own leases, and, by reason of the migratory and fugacious nature of the oil and gas deposits in the reservoirs, this practice worked great injury to the rights of the non-integrated producers because it drained the oil from beneath their lands; and many of them for their protection produced through their wells large quantities of oil and, having no market therefor, attempted to save it by constructing and running it into earthen tanks, sometimes made by erecting dams across ravines and even creek beds. Some of them erected steel or wooden tanks and stored their production therein. The conditions are described in orders of the Oklahoma Corporation Commission issued in 1914 and 1915. In Order No. 829 dated July 1, 1914, it is said that in the Cushing field surplus oil is being stored in earthen and steel tankage "and many thousand barrels have been dammed up in creeks." In Order No. 846 dated September 22, 1941, it is said that in times past when a crude oil pool was discovered in Oklahoma, some of the pipe line companies owning a very small tract in or near the center of the pool extracted an undue proportion of the oil from their properties and refused to buy oil from other producers within the pool; that "with the helplessness of the oil producers in materially curtailing the production and holding his oil in the ground until such times as the transportation facilities and marketing conditions will care for it, he is forced to store it at a cost of approximately thirty

cents per barrel, including loss the first six months by evaporation. There are now ten million barrels of surplus production of oil stored in the Cushing field." The non-integrated producers "cannot even protect their own property by holding the oil until such times as market and transportation conditions will properly care for the same. * * * Many barrels go down the creek and are destroyed in various ways." In its order No. 920 dated June 5, 1915, about four months after said law was enacted, it is recited that the Commission had ascertained that in the Healdton field more than 600,000 barrels of oil had been placed in earthen storage and that as the result of rains much of it [fol. 250] was carried off and greatly injured crops and farm lands. The Commission in its Order No. 937 of September 1, 1915, quotes a statement to the effect that more waste oil ran down the creeks from the Glenn Pool than was ever produced in Illinois. In a letter of instructions dated June 10, 1915, written to its agent to enforce its proration Order No. 920, the first to be issued under the Act here in question, the Commission mentions the evil conditions which had obtained before the passage of the Act and said:

"These conditions existed not only upon the date of the order but at the time of the trial (conducted as a basis for said order) and likewise upon the date of the enactment of the conservation law, and out of the conditions found by the Commission which were already known to the public, the said Act and the necessity therefor arose."

In said Order No. 920 the Commission interpreted the Act as intended to authorize the Commission to limit production to the amount of the reasonable daily market demand and to require ratable taking by all producers in the pool, and by said order this was done in the Healdton field.

In its current orders the Commission found that unless production in the prorated areas was limited to the reasonable market demand, conditions of waste and disproportionate taking, similar to those described in these old orders, would again arise; and the Court finds from the evidence in this case that the regulations prescribed by the Commission in its current orders, are necessary to prevent such waste and disproportionate taking.

[fol. 251] VIII

In Order No. 5189, dated June 30, 1930, the Commission found from the evidence introduced before it, that there was a general overproduction and importation of crude oil and refined petroleum in the United States and that said fact tended to reduce the amount of crude oil that could be produced in the State of Oklahoma without waste; that the potential production of crude oil in the United States at said time was approximately 4,730,000 barrels per day and imports aggregated approximately 300,000 barrels per day, thus creating a total possible current supply of 5,030,000 barrels per day, and that the approximate daily demand for domestic use and export in the United States was at that time approximately 2,840,000 barrels per day. The findings contained in its subsequent orders disclose that the same general condition of overproduction throughout the United States continued to obtain, and the Court finds that said conditions exist at this time.

In said order of June 30, 1930, in addition to the foregoing, the Commission found from the evidence before it that there were stocks of crude petroleum on hand in storage in the United States aggregating more than 698,000,000 barrels, which stocks were excessive and beyond the needs of the petroleum industry and also found from the evidence before it that by reason of the excessive supply of crude oil thus indicated, the purchasers of crude oil in Oklahoma were unwilling to purchase crude oil in Oklahoma for storage purposes in any amount that would be adequate to take care of the surplus of potential production in Oklahoma over the current demand; and the court also so finds from the evidence before it, there was not sufficient empty tankage available to take care of said excess and that unless the potential production in Oklahoma should be curtailed much oil would necessarily go to earthen storage where it would evaporate and thus be wasted. Similar findings of fact were contained in subsequent orders of the Commission.

[fol. 252] IX

The first of the present series of orders, rules and regulations of the Corporation Commission, commonly called

"proration orders", was put in effect August 1, 1927 and applied to the then existing flush and semi-flush pools in the Greater Seminole area. Almost continuously since said time proration orders issued from time to time by the Commission, applicable to the flush and semi-flush pools of the state, have been in force and effect. After the Oklahoma City field was discovered in December, 1928, it rapidly developed into a very prolific field, and the production therefrom soon exceeded the amount of the market demand for oil produced therein. The first of said proration orders which affected the Oklahoma City field was put into effect October 15, 1929. The Commission's orders usually covered a period of the next succeeding three calendar months and were made for such short terms because of the rapidly changing potential production of the prorated pools and changes from time to time in the amount of market demand from each of the said several pools.

[fol. 253] X

The said orders of the Corporation Commission which are attacked in this suit, were made and entered under and pursuant to the provisions of Sections 1, 3, 4, 5 and 6 of the Oklahoma Oil Conservation Act, approved February 11, 1915.

Each of the said orders was entered upon proper application by petition of some interested person; the application was set for hearing, of which due and reasonable notice was given to all persons and classes interested therein, as provided by section 6 of the Act; testimony was taken at the hearings on said applications, and the findings of fact upon which the regulations were based, were made from the evidence adduced at the hearings.

The evidence taken by the Commission upon the various hearings was not introduced in evidence in this suit, except an abstract of that part of the evidence taken at one of the hearings on the question of waste. The abstract of the evidence before the Commission so introduced sustained its findings of fact thereon. The allegations of the third amended and Supplemental Bill of Complaint that the several orders complained of were entered and promulgated by the Commission without having heard the testimony of any witnesses under oath; without having heard any sort

of legal evidence upon which to base said orders; and the findings of fact were not supported by any evidence before it, are not sustained by the evidence herein.

[fol. 254] XI

On June 30, 1930, the Commission made and entered its order No. 5189 in cause No. 10146 (Exhibit "A" to Third Amended and Supplemental Petition), being the first of the orders complained of in this suit. The order recites the findings of the Commission rendering it necessary to limit the production of oil from certain pools therein described, including those in the Greater Seminole Area, and the Oklahoma City field, for the months of July, August and September, 1930. The order recites the findings of the Commission as to the potential production from each of the pools affected and the reasonable market demand for oil from each during the period, and accordingly ordered that the production of oil from each well in the several pools during the period be limited to a certain therein prescribed percentage of its potential production, the percentage as to the wells in each pool being arrived at by dividing the market demand for oil from such pool by the total potential production of all wells therein as found by the Commission.

Thereafter by reason of an increase in potential production, and a decrease in market demand, the Corporation Commission found it was necessary to reduce the percentage prescribed by Order No. 5189, and by Order No. 5292, made and entered August 30, 1930, adjusted the percentage of production of the wells in the various pools for the month of September, 1930, to the changed conditions shown by the evidence before it.

Thereafter by Order No. 5337, made and entered September 30, 1930, the Commission continued its existing orders in force and effect until the 10th day of October, 1930.

By Order No. 5345, made and entered on October 10th, 1930, the Commission found that it was impossible to conclude a hearing then being had upon a petition for a proration order for the months of October, November and December, 1930, and extended its then existing orders in full force and effect until October 20, 1930, and thereafter until the further order of the Commission.

[fol. 255] XII

By order No. 5369, entered October 28, 1930, in said cause No. 10145 (now in force, except as modified by subsequent orders and referred to as the "basic order") the Commission grouped all the various oil pools in the State, placing in each group all the pools similarly affected by the order, and designated the respective groups by letters as Classes "A" to "H", inclusive. The Bowlegs, Earlsboro proper, Earlsboro Township, Little River, East Little River, Maud, Mission, Searight, Seminole, East Seminole and St. Louis pools in the Greater Seminole Area were grouped with certain other pools under the designation of Class "B" pools. The Carr City and South Earlsboro pools in that area were included in the Class "C" group. The Konawa pool in that area was included in the group designated as Class "D". The East Earlsboro and West Asher-Wanette pools in the Greater Seminole Area were designated as Class "E". The Oklahoma City pool was designated as Class "H".

The Commission determined from the evidence before it the potential production of the wells in each of the pools for each of the months of October, November and December, 1930, the reasonable market demand for oil from each pool for each of said months, and the number of barrels of oil necessary to be produced from each pool to supply the market demand therefrom for each of said months. In accordance with such findings and to prevent production in excess of the reasonable market demand from the several pools, during that period, the Commission ordered that the production (with certain immaterial exceptions) from each well in the respective pools, be limited to 50% in Class "B" and from 18¾ to 50% (according to capacity of the wells) in Classes "C", "D" and "E" of the potential production of the respective wells therein.

It was further ordered that production from the Oklahoma City pool (Class "H") be limited to 131,095 barrels per day for October, 134,589 barrels per day for November and 131,003 barrels per day for December, which amounts were found to be the reasonable market demand from that field for the said respective months. It was provided in the order that such permitted production in the Oklahoma [fol. 256] City pool should serve as a basis for fixing the

proportional production of the wells in said field until the Commission found from evidence that a greater or less reasonable market demand obtained. It was further ordered that the Umpire and Operator's Committee for the Oklahoma City pool compute the percentage of potential production from time to time as found necessary to conform the permitted production to the reasonable market demand and report their findings to the Commission as a basis for an ancillary order.

It was further provided in the order that should the demand for crude oil increase prior to December 31, 1930, to such an extent as to permit a greater outlet from the pools affected by the order, the facts should be reported to the Commission, and notice was given that the percentage of production allowed by the order would be revised accordingly. Jurisdiction of the cause was retained and notice given that supplemental and ancillary orders would be made from time to time as required by new developments.

Said order also provided that "producers in each of the pools in Oklahoma are invited to appear before the Commission at any time that they may deem themselves peculiarly injured by the administration of this order in any particular or in any manner discriminated against, and the Commission will hear and act upon the evidence disclosed in such hearing. Notice should be given to the umpire and the operators' committee of the intention to thus appear before the Commission on any such question."

[fol. 257] XIII

By its Order No. 5413, made and entered on December 30th, 1930, the Commission extended and modified its Order No. 5369 dated October 28, 1930, for the months of January, February and March 1931. The Order recites the findings of the Commission from the evidence adduced at the hearing, as to the potential production from each of the various pools, including the pools in the Greater Seminole Area, and the Oklahoma City field, and the reasonable market demand therefrom during the period. Upon these findings the Commission prescribed the percentage of its potential production each well in the several pools should produce to conform the production from each pool to the reasonable market demand therefrom, resulting in an al-

lowable production of 50% of the potential capacity of the wells in certain pools in the Greater Seminole Area, and percentages of from 18¾% to 50%, depending on the potential capacity of the wells, in certain other pools in that area. The Commission fixed the percentage of production of the wells in the Oklahoma City field, effective January 3, 1931, at 7:00 A. M., at 1½% of the potential production thereof, upon a finding, from the evidence, that the potential production of all the wells in that field was 5,388,298 barrels per day, and that the market demand for oil therefrom amounted to 85,000 barrels per day. The Commission further ordered that the method of proration in the Oklahoma City field should on that date be changed from the "time basis," theretofore in effect therein, to the basis of percentage of daily potential production under rules and regulations embodied in a separate supplemental order that day issued. In that order, 5414 it was provided that each well in the Oklahoma City field should be *guaged* by an open flow to capacity for four hours, while other wells in the vicinity were shut in, and that the amount of oil produced during the four hours multiplied by six would be the potential capacity of the well per day of twenty-four hours.

[fol. 258] XIV

By its order No. 5437, made and entered to February 10th, 1931, the Commission found that a market demand existed for oil from the Oklahoma City field in excess of that found by Order No. 5413, for the remainder of the period covered by said Order No. 5413, and ordered that the production from that field be increased from 85,000 to 125,000 barrels per day. In said order No. 5437 the Commission found that the then total Oklahoma City pool potential of approximately 6,000,000 barrels per day arrived at by multiplying the amount produced during the four hour open flow of the wells therein by six, resulted in an amount in excess of what would be actually produced in a period of twenty-four hours of continuous flow with all the wells in the pool open at the same time, but that it was a physical impossibility because of inability to find storage to make a test of all wells open simultaneously for twenty-four hours. The Commission found from the evidence that a well opened by itself when all other wells were closed,

would produce two and one half times as much as it would with all other wells open at the same time. Therefore, to arrive at the amount that would be produced during the four hour period if all other wells were open, the Commission ordered that the amount produced during the period with the other wells closed should be divided by two and one-half. The Commission further found from the evidence that a well open continuously for twenty-four hours would not produce six times as much as in the first four hours, but only five times as much. Therefore, to arrive at a correct daily potential of a well the amount produced during the four hour gauge should be divided by two and one-half and the quotient multiplied by five, or the same result would be arrived at by dividing by three and multiplying by six. This is the method of determining the potential production elsewhere referred to in these findings as the Commission's formula or revised formula. The Commission found that according to that formula the then potential production of the Oklahoma City field was 2,000,000 barrels, and that in order to limit the production to 125,000 barrels, each well should be limited to 6¼% of its potential production determined according to said formula. Order No. 5369 of October 28, 1930, was continued in force until March 31, 1931, except as so modified by this and other subsequent orders.

[fol. 259] XV

On March 5, 1931, by Journal Entry No. 1856, the Commission set aside an oral announcement it had made on March 4, 1931, increasing the allowable production in the Oklahoma City field to 150,000 barrels per day and continued its previous order of February 10, 1931, fixing the allowable for said field at 125,000 barrels per day in full force and effect until the further order of the Commission.

[fol. 260] XVI

On March 17, 1931, by Journal Entry No. 1864, the Commission continued in force and effect until its further order its previous Orders No. 5413 and 5414, and No. 5437, and the order contained in its Journal Entry No. 1856.

[fol. 261] XVII

On April 20, 1931, by Order No. 5468, the Commission increased the allowable production from the Oklahoma City field to 165,000 barrels per day for the remainder of the month of April and to 175,000 barrels per day for the month of May and fixed the percentage of allowable production from the wells in said field at 7% of their respective potential productions for the period from 7:00 o'clock A.M., April 20, 1931 to 7:00 o'clock A. M., May 1, 1931, and at 6% during the month of May, 1931, with certain unessential modifications with respect to overproduced, and underproduced, and underrun wells.

[fol. 262] XVIII

On May 29, 1931, by Order No. 5486, the Commission fixed the allowable production for the wells in the Oklahoma City field at 6% of their respective potential production for the month of June, 1931, and until the further order of the Commission, and continued in force and effect its previous orders relating to said field except as modified in and by said Order No. 5486 and set the matter down for further hearing at 10:00 o'clock A.M., June 29, 1931.

XIX

[fol. 263] On June 27, 1931, by special Order No. 5548, the Commission, in order to provide for an increase in market demand, increased the allowable production from the Oklahoma City pool to 200,000 barrels per day for the last four days of the month of June and fixed the percentage of allowable production from the wells therein at 10% of their respective potential capacities during said four day period and until the further order of the Commission.

XX

[fol. 264] On June 30, 1931, by Order No. 5549, the Commission, pursuant to a hearing commenced on June 29, 1931, fixed the allowable production from the Oklahoma City field for the month of July at 203,170 barrels per day; ascertained the potential production of the field as a whole as being 2,678,679 barrels per day and fixed the allowable

production from each of the wells therein at 8% of their respective potential productions; and fixed the allowable production for the month of August at 198,000 barrels per day and fixed the percentage of allowable production from each of the wells therein during said month at 7% of the potential production of such wells; and fixed the allowable production for the month of September, 1931, at 182,000 barrels per day and the percentage of allowable production at 6% of the potential production of the wells, until and subject to the further orders of the Commission.

XXI

[fol. 265] In its said Order No. 5369, dated October 28, 1930 and which is now in force except as modified by subsequent orders, the Commission stated that it had examined many witnesses and had afforded an opportunity for everyone interested to be heard. Therein the Commission made the following finding of fact from the evidence before it:

"The Commission finds from the evidence that crude oil and natural gas occur together, or in close proximity to each other in the ground and that there is a common gas pressure throughout a common pool which exerts an energy or force to move the gas and oil toward the point of least resistance, and that therefore when wells are drilled into a pool or structure the oil and gas become migratory, and, having the power of self-transmission, will move from one property to another, underground, in such pool; and that when some of the wells in such a common pool are permitted to produce at a greater proportion of their capacity than others, drainage occurs from the less active to the more active wells, if such disproportionate condition is continued; that in the Oklahoma City pool there is a heavy gas pressure which would cause such drainage should disproportionate taking of crude oil and gas be permitted; that the history of the oil producing business in this and other surrounding states shows that in the case of flush pools where proportional taking from the wells is not enforced, and where the full production from the pool cannot be taken, either because of inadequate transportation facilities or because the reasonable market demand does not equal the potential production, producers who do not have

physical or market outlets will be forced to produce their wells to capacity in order to prevent drainage of the oil to the wells of such producers as do have adequate physical or market outlets. In such cases, in the absence of adequate steel storage available to every producer, some of them will flow the oil into earthen pits. This has occurred many times in the oil pools in Oklahoma and surrounding states and has always caused actual physical waste to the crude oil through evaporation, leakage and washouts to a very large extent. The Commission finds that this would be the case in the Oklahoma City field, and in many other fields of the state if production were not curtailed as provided in this order.

The Commission further finds that to permit the wells in the Oklahoma City field to flow wide open and continuously, without limitation as to time, would cause serious underground waste."

The Court, from the evidence before it in this case, also so finds.

In said order the Commission made the following additional finding of fact from the evidence before it, namely:

(i) "The Corporation Commission further finds that in addition to the prevention of waste of crude oil, the establishment of the curtailment plan in this order set forth will tend to conserve natural gas and gas pressure in the pools to which it shall be applied."

This is established also by the evidence in this case.

XXII

[fol. 266] In said Order No. 5369, dated October 28, 1930, the Commission made the following finding of fact from the evidence before it:

"The Commission finds that the full potential production from the Oklahoma City pool cannot be produced without waste, including physical waste and waste incident to the production of crude oil or petroleum in excess of the reasonable market demand, and that the reasonable market demand from said pool at the present time is approximately 131,095 barrels per day, and that in the month of Novem-

ber said reasonable market demand from said pool will be approximately 134,589 barrels per day and that in the month of December the reasonable market demand from said pool will be 131,003 barrels per day, and that the market demand herein named is somewhat contingent upon transference by the purchasing companies of purchasing power from the "Class A" pools herein to the Oklahoma City pool and upon ability to transfer pipeline connections, and the Commission therefore finds that the orders, rules and regulations should be made sufficiently flexible so that increases or decreases in market demand from said Oklahoma City pool and increases or decreases in potential productions therefrom, can be recognized by ancillary orders of the Commission, and that for this purpose the umpire and Operators' Committee should be instructed to compute from time to time, the rate of curtailment necessary in order to conform the permitted production to the reasonable market demand from the said Oklahoma City pool and to report the same to the Commission with the facts in support thereof as a basis for such ancillary order; it being understood, however, that whatever reasonable market demand develops for crude oil from the Oklahoma City pool shall be prorated among all the producing wells therein, so that each well will be permitted to produce its proportionate share of the amount of oil that may be produced from said field without waste."

The Court finds from the evidence before it, that the full potential production from the Oklahoma City field on the date of said order and during the period of time covered thereby and since then and at this time could not and cannot be produced without waste, including physical waste and waste incident to the production of crude oil or petroleum in excess of the reasonable market demand for oil therein and that in said order and subsequent orders the Commission restricted the production of oil in said field to the amount of the reasonable market demand for oil therein as then ascertained to exist and that the present restriction of the production of oil therein conforms to the amount of the reasonable market demand for oil produced therefrom.

XXIII

[fol. 267] That in each of the above mentioned orders the Commission retained jurisdiction of the cause and authority to make and enter supplementary and ancillary orders from time to time as would be required by new developments and changes in conditions. The Commission made and entered supplementary and ancillary orders, not herein specifically mentioned, for the purpose of adjusting the production to changes in potential production and market demand, and correcting inequalities which inevitably from time to time developed as an incident to the execution of its orders, and in order to accomplish as nearly as could be done, the prevention of unfair and inequitable taking on the part of any producer in any of the prorated pools.

XXIV

[fol. 268] On the foregoing features of the case as a whole the Court finds generally from the evidence introduced before it:

(a) That there was at the times the orders in question were made and entered, and is at this time, a serious potential overproduction of crude oil in Oklahoma and throughout the United States and particularly in the flush and semi-flush pools of Oklahoma, including the pools in the Greater Seminole Area and the Oklahoma City field, to which proration was applied by the Corporation Commission;

(b) That the threatened overproduction was so great at the respective times when said orders were entered by the Commission, as to constitute an emergency;

(c) That with stocks of petroleum on hand above ground then as now already greatly excessive, there were and are no adequate storage facilities to take care of the excess of potential production over market demand and that if no curtailment were applied crude oil would inevitably then and that it would inevitably now go into open earthen storage and be physically wasted;

(d) That the full potential production would then and now exceed all transportation and marketing facilities and certainly would exceed all market demands; and

(e) That accordingly it was necessary in order to prevent the waste of the petroleum, an irreplaceable and natural resource which had been discovered in the state of Oklahoma, and in order to conserve the same, that the production of said flush and semi-flush pools should be restricted as has been done in and by the orders, rules and regulations of the Commission herein attacked by the plaintiff, and that in order to enforce such curtailment with equity and justice to the several producers in each pool it was necessary to enforce proportional taking from each well and lease therein.

Accordingly, a comprehensive plan of curtailment and proration, conforming to the general and specific rules prescribed in said Oil Conservation Act, was constructed by the Commission on the testimony of operators and others and was set forth in detail in the said several orders.

XXV

[fol. 269] At all times in all pools where production was limited by orders of the Corporation Commission, except in Oklahoma City field, the daily average production permitted to each well in a pool was determined by that proportion of its potential production, which the market demand for oil from the pool bore to the total potential production of the pool, as ascertained by the Commission, which is known as the "percentage of potential" basis of proration.

By its Orders No. 5189, 5369 and 5413 the Commission prescribed rules and regulations for taking gauges of the wells and determining the daily potential production thereof in such pools.

The rules and regulations for the gauging of wells where percentage proration was applied provided that a gauge of all producing wells should be taken by the umpire or under his supervision and that it should be taken by each operator in the pool in respect of his or its own wells between the hours of 7:00 A. M. on the day set by the umpire and 7:00 A. M. on the following day; that prior to the taking of such gauge the umpire should appoint a representative of an operator owning a lease adjoining the particular property to be guaged and should notify the opera-

tor whose property was to be guaged of the name of such representative, said notification to be given prior to the taking of the guage. The regulation expressly made it the positive duty of such representative to remain on the lease that was being guaged throughout the entire day that the guage was being taken to witness the guaging of the production therefrom and it required such witness and the operator whose property was guaged, immediately upon the completion of the guage, to file a written statement with the umpire showing the production of such lease and of each well thereon, during the day the guage was taken. The regulation provided that the production so shown should constitute the potential of each of the wells on said lease until the next guage was taken. It was further provided that the wells in each pool should be guaged from time to time as the umpire might designate but not less than once each month, except that in the Greater Seminole Area, [fol. 270] other than in certain designated pools therein the guage might, upon the direction of the umpire, be determined by applying a proper decline curve for each lease so guaged.

In Order No. 5413, issued December 30, 1930, it was provided, that instead of taking the monthly guage, that on the basis of open guages previously taken in certain named pools, the potential production should be declined 5% per month and in certain other designated areas 3% per month and in one named area 10% per month. The testimony establishes that the guages were taken in all the prorated areas other than the Oklahoma City field in accordance with these rules and regulations.

The testimony further shows that in those pools where the decline curve had been applied to previous guages for the purpose of determining the potential production for the month instead of taking a new guage, an actual open flow test was made in the Spring of 1931, which established that the percentage of decline applied produced substantially correct results.

Prior to January 3rd, 1931, the wells in the Oklahoma City Area were prorated on the "time basis" because, as stated by the Commission in Order No. 5369, "the operators in the Oklahoma City pool have, up to this time, unanimously recommended—that proration in that pool be ap-

plied according to the time method," and, as stated in Order No. 5413, "the operators requested it and because there was no practicable way of taking accurate guages as a basis for proration by the percentage of potential method, there being no facilities for handling the oil that would be produced while the guage was being taken." Prior to that date the potential production of the field was determined from the amount of oil produced from the several wells during the last period of permitted open flow during a certain number of hours, reduced by calculation to a twenty-four hour basis.

Under the time method of proration in effect in the Oklahoma City field prior to January 3rd, 1931, all wells were permitted to be opened and operated for the production of [fol. 271] oil the same number of hours in each month, which resulted in each well producing that proportion of its potential production, which the entire amount produced from the field each day during the month (the market demand for each day) bore to the entire potential production of the field.

On December 30th, 1930, by Orders No. 5413 and 5414, the Commission, after a full hearing and consideration of the question changed the method of operating the Oklahoma City pool from the time basis to the percentage basis, its order to be effective from and after 7:00 A. M., January 3, 1931. In Order No. 5414 detailed regulations for the guaging of the wells therein in order to operate the same under the percentage basis, were set forth. Therein it is provided that before any well in the pool is open for guaging, the owner thereof shall file with the umpire at his office in Oklahoma City, on or before 12:00 Noon of the day preceding the day on which such well is to be opened for such purpose, a written notice giving the name and address of the operator in charge of said well, the name of the operator's representative who will witness the test of such well, the location of the well, its number, and the hour, not earlier than 8:00 A. M, nor later than 1:00 P. M. at which the well will be opened for such purpose; that said notice shall remain on file in the office of the umpire and be subject to the inspection of any producer in the pool. It further provides that when a well is opened for the purpose of determining its potential, it shall be permitted to produce for four hours and that the amount produced during said time shall be

multiplied by six and that the amount thus arrived at shall constitute the tentative daily potential of said well for the then current potential period of thirty days. It further provided that the umpire should appoint a representative of an operator in no way interested in the well to be tested, to be present and to witness the test being made of each well and that it should be the duty of such representative to remain at the well during the entire time the same is being [fol. 272] produced for the purpose of determining its potential and to witness all measurements and calculations made for the purpose of determining the actual production of oil by said well; and that immediately after the completion of the test the representative of the operator and the representative appointed by the umpire should sign a written statement duly verified by both on a form to be approved by the Commission and file the original with the Commission and a copy with the umpire, showing the amount of oil produced by said well during the test period as defined in the regulation. The wells in the Oklahoma City field have since been guaged in accordance with said regulations. Said regulations further provide:

"In the event the umpire's representative, and well owner's representative at the testing of the well, are agreed as to the daily potential of the well as determined by the test, the operator may continue forthwith to produce said well until there has been produced therefrom, including the amount produced during the test, the total allowable, to be calculated as hereinafter provided, for the current month. In the event the representatives of the umpire and the well owner are not agreed as to the daily potential of any well, the well shall be shut in at the close of the test, and the matter referred to the umpire. If the umpire and the operator agree as to the daily potential of the well, the operator shall, thereupon, be permitted to produce the well until it has produced, including the amount produced during the test, its tentative allowable for the current month based upon the potential so agreed upon. If well owner and umpire are unable to agree as to the daily potential of any well, the matter shall be referred to the Corporation Commission for determination, and pending final determination by the Commission the operator shall be permitted to produce the well until, on the basis above outlined, it has

produced a tentative allowable for the current month calculated on the basis of the daily potential as fixed by the umpire."

The Court finds from the evidence that a guage for a longer period, or a guage of all of the wells in the Oklahoma City field at the same time with all wells open to full production would be physically impossible; that the available storage and transportation facilities would be wholly inadequate to handle the oil produced; that the method employed in the Oklahoma City field and in the Greater Seminole Area for the taking of guages, arrived at approximately accurate results; that the orders of the Commission fixed the allowable of every producing well in the Oklahoma City field at the same relative proportions of their [fol. 273] respective potentials, and that said orders did likewise in every other prorated field; that there has been a substantial compliance with the guaging provisions of Section 5 of the Oil Conservation Act; and that no discrimination between producing wells resulted from the method by which the potentials thereof were determined; that the rules and regulations of the Commission relating to the giving of notice and the taking of the potentials in the several prorated areas were observed in the taking of said potentials and there is no evidence showing or tending to show that any frauds were practiced or favoritism shown in connection therewith. No notice was given to the operators in any pool of any intention to guage wells in any other pool.

In its Order of February 10, 1931, No. 5437, the Commission changed the method of computing the potential production of the wells in the Oklahoma City field from that of multiphying the four hour guage by six to that of multiplying the four hour guage by six and dividing the result by three, for the reasons set out in this court's finding No. XIV. It appears from the testimony herein, that it was physically impossible to flow all the wells in the field wide open at the same time for as long as four hours, much less twenty-four hours, since it would result in a production which it was impossible to store or otherwise conserve and the greater portion of the production would have been wasted on the ground. As a result it was necessary that all neighboring wells be closed in when taking the four hour

guage of any given well. Since all wells were guaged in the same manner, their respective potentials, as shown by such guages, resulted in no discrimination as between the producers. The Court finds from the evidence in this case that this method of arriving at the potential is justified by the circumstances and is reasonable and that since it was applied alike to all wells, it has not resulted in discrimination as between producers, or between pools.

XXVI

[fol. 274] Pursuant to the provisions of Section 5 of the Oil Conservation Act, authorizing it to employ or appoint such agents with the consent of the Governor, as may be necessary to enforce the Act, the Commission from time to time prior to June 30, 1930 (the date of the first of the Orders complained of in this suit) appointed Ray M. Collins as umpire and agent of the Commission, and an "Operators Committee" for each prorated pool consisting of three or more operators in such pool, to assist him in administering the rules and regulations prescribed by the orders.

On June 30, 1930, the said Collins was again appointed as such agent and umpire, and an Operators Committee appointed for each prorated pool. On November 3rd, 1930 the said Collins was again appointed agent and umpire, and Otto Bradford was appointed as his special assistant, and an Operators Committee for each prorated pool was appointed by the Commission. Again on January 5th, 1931 the said Collins was appointed such agent and umpire by the Commission, and the said Bradford reappointed as his assistant, and an Operators Committee was appointed for each prorated pool. The said appointees are now acting as agents of the Commission in the administration of its rules and regulations now in force and effect. Each and all of said appointments were consented to by the Governor expressed in writing.

The said Collins and Bradford devote all their time to the employment by the Commission. Prior to the appointment of Bradford as his assistant, Collins served all the prorated pools in the State. Since his appointment, Bradford has devoted his time to the Oklahoma City field, and Collins to the remaining prorated areas. The umpires, as

agents of the Commission, have supervised the taking of gauges of wells, have ascertained the daily production of all prorated wells, checked the same against pipe line runs, and amounts transported by other carriers, and kept complete records thereof, to the end that the wells in each pool should be operated and oil produced in accordance with the prescribed rules and regulations, and violation thereof detected and reported.

[fol. 275] The appointment of such agents was necessary for the purpose of properly and effectively administering the Act and the rules and regulations thereunder. The Commission did not have a sufficient number of regular employees to care for the extra work entailed by the administration of the rules and regulations. No appropriation was made by law for payment of the services of agents appointed under Section 5 of the Act. The members of the operators Committee served without compensation. The salary ($2,000.00 per month) and expenses of Collins, has been paid since he was first appointed, from a fund derived from voluntary contributions of producers in the Greater Seminole Area. All producers in the Seminole area only are permitted to and the great majority of them do, contribute thereto. The contributions are made pro rata on the basis of the production of each contributor to the total production.

The compensation of Umpire Bradford ($600.00 per month) and expenses of his office are paid by voluntary contributions of a great majority of the producers in the Oklahoma City field, who also contribute thereto on the same pro rata basis. All operators in the Oklahoma City field desiring so to do are permitted to contribute to said fund.

The method of compensating the umpire and his assistants has been followed at all times under the present series of proration orders, commencing in the Fall of 1927, and has been at all times known to the Commission and Governor, and was a matter of general knowledge. During that time there has been two sessions of the Legislature of Oklahoma, one beginning in January 1929, and the other in January 1931. The practice was not prohibited by the Legislature and no funds otherwise provided for the payment of such agents. The umpires and operators Com-

mittees are not officers of the State of Oklahoma, but merely agents or employees of the Commission, appointed with the consent of the Governor. While this method of compensating agents of the Commission is calculated to breed suspicion and distrust and destroy confidence in the integrity of the Commission, the evidence does not establish that [fol. 276] such agents and employees, of the Commission, have been guilty of favoritism or dishonesty, or that the Commission has acted arbitrarily or discriminated in favor of the groups paying such agents, or that the plaintiff has suffered any injury by reason thereof, and the Court finds no basis in the evidence for striking down the orders by reason of this practice.

[fol. 277]

XXVII

The Court finds that the Commission in and by its proration orders has not discriminated against the Oklahoma City pool nor any other prorated area, nor has it discriminated in favor of the Greater Seminole Area. The basis upon which the Commission classified the different prorated pools for the application of the varying percentage of allowable production therein as shown in its several orders was the existing relation between the potential production of each pool and the amount of crude oil which could be produced therefrom without waste. (See, for example, paragraph "(g)" of Order No. 5369.) Said relation was not the same in all the prorated pools and therefore the percentages of curtailment necessarily varied as between pools. We find, as did the Commission in its orders, that the said pools were not all served in common by the same pipe lines and purchasers, and that the reasonable market demand for certain of them was greater in proportion to the potential production thereof than in the case of others; that some of them were older than others and have been prorated longer than others; that in some of said pools there are located purchasers whose local facilities are not extended to the others; and also that in some of said pools there has been more intensive drilling and wells of larger capacity have been brought in than in others. In 1925 or 1926 the first of the pools in the Greater Seminole Area was discovered and other pools in said area have been since discovered and developed; whereas the

Oklahoma City pool was not discovered until December, 1928, at which time many of the pools in the Greater Seminole Area were quite fully developed and were producing very large quantities of oil and some of them at said time had passed the period of flush production. The Seminole Area has already produced approximately 500,000,000 barrels of oil, whereas the Oklahoma City field has already produced about 60,000,000 barrels, although its actual daily production is at this time greater than the actual daily production of all of the pools in the Greater Seminole Area. The Seminole Area is in a more favored location with reference to the long established large inter-state trunk pipe lines than is the Oklahoma City field and naturally has a [fol. 278] larger market demand. The Court finds that the Commission and also Umpire Collins and the so-called state-wide advisory committee (appointed by producers) have endeavored to induce the purchasers of crude oil to increase the amount of their purchases from the Oklahoma City field. The constant bringing in from time to time of new wells of very large potential capacity in the Oklahoma City field, which is not yet fully developed, has resulted in a constant and rapid increase in the potential of the field as a whole, whereas the market demand for oil therein has increased very slowly. The Court finds that these circumstances justify and have necessitated a larger percentage of allowable production in the Seminole Area than that in the Oklahoma City field. Said field, by the drilling of additional wells therein, has proved to be a field of extensive area with wells of tremendous productive capacity. At the time of the trial of this cause there were over 800 wells therein and the field was still in the course of development.

We do not find that there has been any discrimination in the orders of the Commission in favor of the Greater Seminole Area, or against the Oklahoma City pool, or in favor of any prorated pool in the state as against any other pool therein. None of the prorated pools have the same market demand in proportion to their potential production. In order to equalize the production with the demand from each of them it was necessary to have different degrees of curtailment. The Commission having recognized the reasonable market outlet for each of the pools we find that there has not been any unfair discrimination as between pools.

[fol. 279] XXVIII

The Court finds that none of the orders of the Commission have been made and entered for the purpose of fixing or maintaining the price of crude oil, or that the orders have had that effect. The price of crude oil in 1927 when the first proration order of the present series of orders was entered was more than $2.00 per barrel. Since that time the price of crude oil has gradually declined from time to time until at the time of the trial of this cause it was 35¢ per barrel. Some of the protestants who appeared before the Commission at the hearing conducted by the Commission as a basis for Order No. 4369 dated October 28, 1930, made the contention, according to the findings set forth in said order, that the proration of the Oklahoma oil pools was a scheme to maintain the price of crude oil by the Commission; but in and by said order the Commission declared that its orders have been and are based solely upon the purpose to prevent waste of crude oil in the State and in the process of doing so to require ratable or proportional taking from each of the wells in a common source of supply where curtailment of production from the pool as a whole was necessary in order to prevent waste, and the Commission declared it had exercised its independent judgment in prescribing the proration orders and had not attempted to influence the price of crude oil or refined products and that if any such effect had occurred it was incidental and not intended. In said order the Commission found that since 1926 the price of oil had declined 40%, and declared that it had never limited production below the market demand, and declared that the prices at which oil was sold was fixed not by the Commission but by the free play of competition and the relation between supply and demand in the world market. There was no evidence introduced at the trial of this cause showing or tending to show that the orders of the Commission were intended to fix or control the price of crude oil. It is established by the evidence that in each instance the Commission has allowed to be produced the full amount of the market demand for each pool and there is no evidence in this case that there was a demand for more oil from any pool than the Commission allowed to be produced.

[fol. 280] In 1914 the Oklahoma Corporation Commission entered a few orders attempted to fix the price of crude oil. At that time there was no statute in Oklahoma analogous to the provisions of the Act of February 11, 1915. The Commission has never entered any order under Section 2 of said Act.

[fol. 281] XXIX

There was introduced in evidence an agreed narrative statement of the evidence before the Commission on the subject of waste. We find from said narrative statement that it was proved to the Commission and well established that the commission of both surface waste, under-ground waste and waste incident to the production of crude oil in excess of reasonable market demands, would have occurred in each of the prorated pools in the absence of the making of the proration orders and rules and regulations herein attacked by the plaintiff, for the prevention of such wastes. We find that the evidence before the Commission on the subject of waste clearly established that the commission of such wastes was imminent.

[fol. 282] XXX

The orders, rules and regulations of the Corporation Commission regulating the production of oil from the wells of all producers, including those of plaintiff, in the Oklahoma City field, Greater Seminole field and other fields in Oklahoma, were made and entered upon petitions filed by interested persons, and after proper notice, and upon sufficient evidence, for the purpose of preventing waste and protecting the co-equal rights of the several owners of land over each pool. In one of the orders the Commission recites that 65% to 75% of the crude oil produced in Oklahoma is sold to purchasers and refiners who transport it out of the State. The orders, rules and regulations do not operate to prevent or restrict the sale or transportation in interstate commerce of any oil produced. There is no evidence that the Commission intended by their orders and rules to limit the amount of oil entering interstate commerce for the purpose of controlling the price of crude oil

or its refined products, or of eliminating the plaintiff or any other producer or refiner from competition with any other producer or refiner. There is no evidence of any agreement, combination or confederation among competitors of plaintiff, by the formation of an "Operators Committee" or otherwise, for the purpose of monopolizing or restricting trade and commerce in crude oil or its refined products among the several states. There is no evidence that an Operators Committee of plaintiff's competitors, through Ray M. Collins or any other person, formulated the orders, rules and regulations promulgated by the Commission or that the same were approved by the Commission without sufficient, appropriate or competent evidence, legally or properly to justify entry thereof.

[fol. 283]

XXXI

This Court denied the application of plaintiff for an interlocutory injunction on February 9th, 1931, and thereafter the plaintiff prior to May 28th, 1931, produced from its wells in the Oklahoma City field approximately three hundred thousand barrels of oil in excess of the amount which by the orders of the Commission it was allowed to produce, and on May 28th, 1931 the Attorney General of Oklahoma, acting under the authority of the provisions of Section 9 of said Act, filed a suit in the name of the State of Oklahoma on the relation of the Attorney General against plaintiff herein as defendant in the District Court of Oklahoma County, Oklahoma, seeking an injunction against plaintiff to restrain it from violating said Act and/or the orders of the Commission in the operation of its wells in the Oklahoma City pool and for the appointment of a receiver to take charge of and to operate said wells in conformity with said Act and orders. Upon application of the Attorney General a temporary injunction was issued by said state Court restraining the plaintiff herein from producing oil or otherwise violating said Act and orders of the Commission. Thereupon, upon application of the plaintiff herein to this Court in this cause, this Court on June 13th, 1931 issued a restraining order against the Attorney General of the State of Oklahoma enjoining the prosecution of said suit and commanding the Attorney

General to procure dissolution of said State Court injunction. Thereupon the defendant J. Berry King, Attorney General of the State of Oklahoma, dismissed said suit in the State Court. No contempt proceeding have been instituted before the Corporation Commission against the plaintiff for violation of its orders. No prosecution has been commenced against the plaintiff or any of its officers, agents or employees under Section 8 of the Act.

[fol. 284] The plaintiff excepts to each and every of the foregoing findings, and such exceptions are accordingly allowed.

Dated September 11, 1931.

John H. Cotteral, Circuit Judge. Orie L. Phillips, Circuit Judge.

I concur in the findings of fact numbered 1 to 20, inclusive; that is, that they are substantially correct.

I specifically dissent to all findings or parts of findings that the orders of the Commission were necessary in order to prevent waste of oil and gas and necessary to enforce proportionate taking from each well and lease within the oil fields of Oklahoma. I am of the opinion that the evidence shows that the orders of the Commission were entered for the purpose of curtailing the production of crude oil in order to raise the price of such oil, and that no attempt has been made by the Commission to prevent the waste of natural gas but the operation of oil wells under the orders of the Commission has resulted in a flagrant and enormous waste of gas.

I specifically dissent to finding number 25 and I am of the opinion that the evidence establishes that the orders of the Commission have never required a gauge of the oil wells in prorated fields to be made in compliance with the statute.

I specifically dissent to findings number 26 and 27 and I am of the opinion that the evidence establishes gross discrimination between the Oklahoma City oil field and the Greater Seminole oil field.

F. E. Kennamer, District Judge.

[File endorsement omitted.]

[fol. 285] IN UNITED STATES DISTRICT COURT.

[Title omitted]

CONCLUSIONS OF LAW—Filed Sept. 11, 1931

The Court states separately its conclusions of law as follows:

(1) Under the police power the state may impose reasonable regulations to prevent waste in the production, handling and marketing of the natural oil and gas resources thereof; and make reasonable regulations for the protection of the coequal rights of landowners over a common pool of oil and gas to take from the common source of supply and to prevent one from taking an undue proportion to the detriment of the others and to prevent one from committing waste to the injury of the others.

(2) It is within the power of the Legislature to lay down a general rule for the prevention of waste and for the protection of such coequal rights of the several owners of land over a common pool of oil and to delegate to an administrative agency the power to promulgate rules and regulations covering matters of detail for carrying the general rule into effect.

[fol. 286] (3) That the provisions of Sections 1, 3, 4, 5, 6 and 7 of the Act of the Legislature of Oklahoma approved February 11, 1915, entitled, "An Act defining and Prohibiting the Waste of Crude Oil or Petroleum, providing for the Equitable Taking of the same from the ground and conferring Authority on the Corporation Commission, prescribing the Penalty for the Violation of this Act, and declaring an Emergency", being Chapter 25 of the Session Laws of Oklahoma, 1915, pages 28 to 31, and Sections 7954, 7956, 7957, 7958, 7959 and 7960 of Compiled Oklahoma Statutes, 1921, constitute a valid exercise of the police power of the State of Oklahoma, and are not in contravention of the provisions of the Commerce Clause or of the Fourteenth Amendment to the Constitution of the United States.

(4) Sections 3, 4, 5 and 6 of said Act provide a complete scheme for the enforcement through rules and regulations promulgated by the Corporation Commission of Okla-

homa of the general rules provided in Sections 1, 3, 4 and 5 thereof for the prevention of waste and for the protection of the coequal rights of the several owners of land over a single pool of oil and gas to take from the common source of supply.

(5) The Court is not concerned with the question of whether said sections of said Act provide the best method of preventing waste and protecting such rights. The determination of that question was a legislative prerogative.

(6) The methods of preventing waste and protecting such rights which are provided in said sections of said Act are, when supplemented by proper rules and regulations of said Commission, reasonably calculated to prevent such waste and to protect such coequal rights of the several owners of land over a common pool; are clearly within the competency of the Legislature, and are not an unreasonable interference with the rights of such owners to enjoy their property.

[fol. 287] (7) That the orders, rules and regulations of the Corporation Commission which are complained of in this suit were made pursuant to and under the authority conferred by the provisions of Sections 3, 4, 5 and 6 of the said Act.

(8) That the said orders of the Commission were not made or entered pursuant to or in the exercise of any authority granted or pretended to be granted to the Commission by the provisions of Section 2 of said Act, and the validity of the said Section 2 is not involved herein.

(9) That said orders, rules and regulations of the Corporation Commission having been made pursuant to the said provisions of said Act and after proceedings conducted by and before said Commission in accordance with the provisions of Section 6 of said Act upon proceedings instituted before said Commission and notice given and hearings conducted as provided therein, constitute a valid exercise of the authority conferred upon the Commission, and their enforcement does not deprive the plaintiff of its property without due process of law or deny to it the equal protection of the law regardless of the fact that plaintiff could produce its wells affected by said orders and utilize with-

out physical above-ground waste an amount of oil in excess of that permitted by the said orders.

(10) That the limitation by the Commission in its said orders of the production of oil from each of the common sources of supply affected by said orders to the amount of the reasonable market demand for oil therein was and is within the authority granted to said Commission by Sections 3 and 4 of said Act in order to prevent economic waste, underground waste, surface waste, and waste incident to production of crude oil in excess of transportation or marketing facilities or reasonable market demands, and in order to protect the coequal rights of the several owners of lands or their lessees and owners of wells thereupon, in such common sources of supply to reduce the oil beneath [fol. 288] to possession; that said limitation is a reasonable basis upon which to predicate the regulation of the taking of crude oil from common sources of supply wherein the full production therefrom can be obtained only under conditions constituting waste as defined in said Act.

(11) That neither the provisions of Sections 1, 3, 4, 5 and 6 of said Act nor the said orders, rules and regulations of the Commission issued by authority thereof were or are intended to decrease the normal supply of crude oil and thereby raise or maintain prices; but the main purpose of said provisions of said Act and of said orders, rules and regulations was and is to prevent the waste of crude oil or petroleum and to protect the coequal rights of all the several owners of land and/or of their lessees over the respective pools to take from the subsurface common source of supply of crude oil, and any effect which they may have upon the price of crude oil is indirect and incidental, and they are not invalidated by reason thereof.

(12) That the rules and regulations of the Commission for taking gauges of the wells are, under the conditions found to exist by the Commission and by this Court, reasonable, and they substantially comply with the provisions of Section 5 of said Act, and their enforcement does not result in discrimination between producing wells or between pools.

(13) That the limitation by the Commission of production from the various distinct pools or common sources of supply, at different percentages or ratios of potential pro-

duction, was justified by the facts and circumstances found to exist by the Commission and by this Court, and does not result in any unreasonable or unlawful discrimination against the Oklahoma City pool or as between any of such sources of supply.

(14) That the payment of the salaries and expenses of the Umpires as agents of the Commission by the voluntary [fol. 289] contributions of interested parties, in the absence of an appropriation of state funds therefor, and impliedly sanctioned by the Legislature, does not render the orders invalid. In the absence of any showing of favoritism or dishonesty, or that the Commission has acted arbitrarily or discriminated in favor of those paying such agents, or of any injury to the complainant, such payment does not render the enforcement of said orders invalid.

(15) The limitation imposed upon the production of oil under said Act and the rules and regulations of the Commission, does not impose a direct or unlawful burden on interstate commerce.

(16) Section 8 of said Act, providing punishment by fine and imprisonment for violations of the Act, and Section 9 thereof, providing for the appointment of a receiver, with limited powers, for the producing wells of any person violating the provisions of the Act, in terms impose penalties for violations of the Act and not for violations of the orders, rules and regulations of the Commission made pursuant to the Act for the purpose of carrying it into effect. Sections 1, 3, 4, 5 and 6 of said Act are too indefinite and uncertain as penal provisions to warrant the imposition of said penalties for violations thereof as distinguished from violations of the orders, rules and regulations of the Commission. Therefore, we conclude, as a matter of law, that Sections 8 and 9 are invalid. However, Sections 1, 3, 4, 5, 6 and 7 are separable from Sections 8 and 9, and although Sections 8 and 9 are invalid, this does not render invalid the said other sections nor the orders which are complained of; and said orders, rules and regulations may be enforced by any appropriate remedy, such as mandamus or injunction.

(17) The Commission not having invoked the provision of Section 6 of said Act to punish plaintiff for contempt

[fol. 290] for violation of its orders, rules and regulations, the question of whether power to punish for contempt, as granted in the provisions of said section, is an invalid delegation of judicial power to the legislative branch of the state government, does not properly arise in this suit, and it is unnecessary to decide said question.

(18) The plaintiff is not entitled to any of the injunctive relief which it seeks in this suit against the enforcement of the provisions of Sections 1, 3, 4, 5 and 6 of said Act and/or the orders, rules and regulations of the Commission which are complained of herein; but is entitled to a permanent injunction against the defendants J. Berry King, as Attorney General of the State of Oklahoma, and Lewis R. Morris, as County Attorney of Oklahoma County, Oklahoma, and their respective successors in office, enjoining them from instituting or prosecuting any proceedings against the plaintiff under and by virtue of Sections 8 and 9 of said Act.

The plaintiff excepts to each of the foregoing Conclusions of Law, except that part of Conclusion No. 16 which holds that Sections 8 and 9 of said Act are invalid and that part of Conclusion No. 18 which holds that the plaintiff is entitled to a permanent injunction against the enforcement of said Sections 8 and 9.

The defendants and each of them except to that portion of Conclusion No. 16 which holds invalid the provisions of Sections 8 and 9 of said Act and that portion of Conclusion No. 18 which holds that the plaintiff is entitled to a permanent injunction against the enforcement of said [fol. 291] Sections 8 and 9.

September 11, 1931.

John H. Cotteral, Circuit Judge. Orie L. Phillips, Circuit Judge.

I dissent, except to that portion of Conclusion of Law No. 16 which holds invalid Sections 8 and 9 of said Act, and that portion of Conclusion of Law No. 18 which holds that the plaintiff is entitled to a permanent injunction against the enforcement of said Sections 8 and 9.

F. E. Kennamer, District Judge.

[File endorsement omitted.]

[fol. 292] IN UNITED STATES DISTRICT COURT

[Title omitted]

The attached revised and corrected majority opinion on final hearing is herewith filed in above entitled cause.

John H. Cotteral, Circuit Judge. Orie L. Phillips, Circuit Judge.

I dissent from the foregoing.

F. E. Kennamer, District Judge.

[fol. 293] IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

No. 1156. Equity

CHAMPLIN REFINING COMPANY, a Corporation, Plaintiff,

vs.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA et al., Defendants

MEMORANDUM OPINION—Filed Sept. 1, 1931

Before Cotteral and Phillips, Circuit Judges, and Kennamer, District Judge

By COTTERAL and PHILLIPS, Circuit Judges:

This is a suit brought by Champlin Refining Company, a corporation, to enjoin the enforcement of certain oil proration orders made by the Corporation Commission of the State of Oklahoma. The case has been finally heard and submitted on the merits; the facts appear from the special findings of fact filed herewith and need not be re-iterated here.

The orders in question are predicated on the provisions of the Act of February 11, 1915, S. L. 1915, page 35, sections [fol. 294] 7954-7963, inclusive, C. O. S. 1921, which is set out in note 1.

NOTE 1

"Section 1. Waste prohibited. That the production of crude oil or petroleum in the State of Oklahoma, in such manner and under such conditions as to constitute waste, is hereby prohibited.

"Section 2. Production and sale regulated—corporation commission. That the taking of crude oil or petroleum from any oil-bearing sand or sands in the State of Oklahoma at a time when there is not a market demand therefor at the well at a price equivalent to the actual value of such crude oil or petroleum is hereby prohibited, and the actual value of such crude oil or petroleum at any time shall be the average value as near as may be ascertained in the United States at retail of the by-products of such crude oil or petroleum when refined less the cost and a reasonable profit in the business of transporting, refining and marketing the same, and the Corporation Commission of this State is hereby invested (vested?) with the authority and power to investigate and determine from time to time the actual value of such crude oil or petroleum by the standard herein provided, and when so determined said Commission shall promulgate its findings by its orders duly made and recorded, and publish the same in some newspaper of general circulation in the State.

"Section 3. Waste defined—protection. That the term 'waste' as used herein, in addition to its ordinary meaning, shall include economic waste, underground waste, surface waste, and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands. The Corporation Commission shall have authority to make rules and regulations for the prevention of such wastes, and for the protection of all fresh water strata, and oil and gas bearing strata, encountered in any well drilled for oil.

"Section 4. Production regulated—discrimination of purchaser prohibited. That whenever the full production from any common source of supply of crude oil or petroleum in this State can only be obtained under conditions constituting waste as herein defined, then any person, firm or corporation, having the right to drill into and produce oil from any such common source of supply, may take therefrom only such proportion of all crude oil and petroleum that may be produced therefrom, without waste, as the production of the well or wells of any such person, firm or corporation, bears to the total production of such common source of supply. The Corporation Commission is author-

ized to so regulate the taking of crude oil or petroleum from any or all such common sources of supply, within the State of Oklahoma, as to prevent the inequitable or unfair taking, from a common source of supply, of such crude oil or petroleum, by any person, firm or corporation, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another.

"Section 5. Wells gauged—governor to consent. That for the purpose of determining such production, a gauge of each well shall be taken under rules and regulations to be prescribed by the Corporation Commission, and said [fol. 295] Commission is authorized and directed to make and promulgate, by proper order, such other rules and regulations, and to employ or appoint such agents with the consent of the Governor, as may be necessary to enforce this act.

"Section 6. Enforcement of act—hearings before corporation Commission. That any person, firm or corporation, or the Attorney General on behalf of the State, may institute proceedings before the Corporation Commission, or apply for a hearing before said Commission, upon any question relating to the enforcement of this act, and jurisdiction is hereby conferred upon said Commission to hear and determine the same. Said Commission shall set a time and place, when and where such hearing shall be had and give reasonable notice thereof to all persons or classes interested therein, by publication in some newspaper or newspapers, having general circulation in the State, and in addition thereto, shall cause reasonable notice in writing to be served personally on any person, firm or corporation complained against. In the exercise and enforcement of such jurisdiction, said Commission is authorized to determine any question or fact, arising hereunder, and to summon witnesses, make ancillary orders, and use mesne and final process, including inspection and punishment as for contempt, analogous to proceedings under its control over public service corporations, as now provided by law.

"Section 7. Appeals to supreme court—effect on orders. That appellate jurisdiction is hereby conferred upon the Supreme Court in this State to review the action of said Commission in making any order, or orders, under this act. Such appeal may be taken by any person, firm or corpora-

tion, shown by the record to be interested therein, in the same manner and time as appeals are allowed by law from other orders of the Corporation Commission. Said orders so appealed from shall not be superseded by the mere fact of such appeal being taken, but shall be and remain in full force and effect until legally suspended or set aside by the Supreme Court.

"Section 8. Penalty for violation. That in addition to any penalty that may be imposed by the Corporation Commission for contempt, any person, firm, or corporation, or any officer, agent or employee thereof, directly or indirectly violating the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof, in a court of competent jurisdiction, shall be punished by a fine in any sum not to exceed five thousand dollars ($5,000.00), or by imprisonment in the county jail not to exceed thirty (30) days, or by both fine and imprisonment.

"Section 9. State may secure receiver—extent and manner. That in addition to any penalty imposed under the preceding section, any person, firm or corporation, violating the provisions of this act, shall be subject to have his or its producing property placed in the hands of a receiver by a court of competent jurisdiction, at the suit of the State through the Attorney General, or any county attorney, but such receivership shall only extend to the operating of producing wells and the marketing of the production thereof, under the provisions of this act.

"Section 10. Validity of relative sections of act. That the invalidity of any section, sub-division, clause or sentence of this act shall not in any manner affect the validity of the remaining portion thereof."

[fol. 296] Counsel for plaintiff contend: First, that the statute on which the orders are predicated is unconstitutional; and, second, if the statute is valid that the orders themselves violate the constitutional rights of plaintiff and are void.

The Validity of the Statute

We observe at the outset, that the burden rests upon the plaintiff to establish that the statute infringes the con-

stitutional guaranties which it invokes and if the statute is susceptible of a construction which conforms to constitutional requirements, doubts must be resolved in favor of and not against the state. Toombs v. Citizens Bank of Waynesboro, 281 U. S. 643, 647; United States Airways v. Shaw, 43 Fed. (2d) 148, 150.

The statute has a dual aspect: First, as a penal statute to prevent waste and to protect the co-equal rights of the several owners of land situate over a common pool of oil and gas to take from the common source of supply; and, second, a regulatory statute to be supplemented by rules, regulations and orders of the Commission to accomplish the same ends.

The penalties provided are for violations of the statute and no penalties are provided for violations of the rules and regulations promulgated by the Commission.

[fol. 297] We are of the opinion that the statute is too indefinite and uncertain to be sustained as a penal statute. Smith v. Cahoon, Sheriff, 283 U. S. —. An oil operator should not be required at the peril of severe criminal penalties to determine in the operation of his oil and gas wells whether he is committing economic waste or producing in excess of reasonable market demands because such terms are not defined in the Act and are of uncertain and doubtful meaning. Likewise, a producer from a common source of supply should not be required to determine at the peril of such penalties whether he can operate at full production without committing economic waste or producing in excess of reasonable market demands.

Furthermore, it is unreasonable to require an operator to choose between two approved methods of operation, the results of which cannot be forecast with precise accuracy, in dealing with the ordinary problems confronted in the drilling and operation of oil and gas wells, at the peril, if he makes the wrong choice, that some underground waste will result and he thereby become subjected to such severe penalties, under a statute which affords no guide for the operator under such circumstances. However, except in one particular hereinafter mentioned, the validity of the Act as a penal statute is not before us.

[fol. 298] Oil and gas are natural resources which cannot be replaced and the power of the state to impose reason-

able regulations to prevent waste in the production, handling and marketing thereof is undoubted. Ohio Oil Company v. Indiana, 177 U. S. 190; Lindsley v. Natural Carbonic Gas Co., 220 U. S. 61; Walls v. Midland Carbon Co., 254 U. S. 300; Cooley's Constitutional Limitations, 8 Ed. vol. 2, pp. 1319-1321.

The right of the state to make reasonable regulations for the protection of the co-equal rights of land owners over a common pool of oil or gas to take from the common source of supply and to prevent one from taking in an undue proportion to the detriment of the others, and to prevent one from committing waste to the injury of the rights of the others is well settled. Ohio Oil Company v. Indiana, supra; Lindsley v. Natural Carbonic Gas Company, supra; Walls v. Midland Carbon Company, supra; Oxford Oil Co. v. Atlantic Oil and Producing Co., 22 Fed. (2d) 597; Id., 16 Fed. (2d) 639; Marrs v. City of Oxford, 24 Fed. (2d) 541; Id., 32 Fed. (2d) 134, 138.

In the Ohio Oil Case the court said:

"On the other hand, as to gas and oil, the surface proprietors within the gas field all have the right to reduce to possession the gas and oil beneath. They could not be absolutely deprived of this right which belongs to them without a taking of private property. But there is a co-equal right in them all to take from a common source of supply, the two substances which in the nature of things [fol. 299] are united, though separate. It follows from the essence of their right and from the situation of the things, as to which it can be exerted, that the use by one of his power to seek to convert a part of the common fund to actual possession may result in an undue proportion being attributed to one of the possessors of the right, to the detriment of the others, or by waste by one or more, to the annihilation of the rights of the remainder. Hence it is that the legislative power, from the peculiar nature of the right and the objects upon which it is to be exerted, can be manifested for the purpose of protecting all the collective owners, by securing a just distribution, to arise from the enjoyment by them, of their privilege to reduce to possession, and to reach the like end by preventing waste."

It is within the power of the legislature to lay down general rules for the prevention of waste and for the pro-

tection of such co-equal rights of the several owners of land over a common pool and to delegate to an administrative agency the power to promulgate rules and regulations covering matters of detail for carrying such general rules into effect. Plymouth Coal Company v. Pennsylvania, 232 U. S. 531; Oxford Company v. Atlantic Company, supra; 12 C. J. p. 847, sec. 830.

Section 10 of the Act provides "that the invalidity of any section, subdivision, clause or sentence of this Act shall not in any manner affect the validity of the remaining portion thereof."

Sections 1, 3, 4, 5, 6 and 7 of the Act provide a complete scheme for the enforcement through rules and regulations promulgated by the Corporation Commission of the general rules provided in sections 3 and 4 for the prevention of waste and for the protection of the co-equal rights of the [fol. 300] several owners of land over a single pool of oil and gas to take from the common source of supply, and may, in our opinion, be severed from the remaining portion of the Act. Ohio River W. R. Co., v. Dittey, et al., 232 U. S. 576; Grand Trunk R. Co., v. Michigan R. Commission 231 U. S. 457; Phoenix R. Co., v. Geary, 239 U. S. 277; Grenada Lbr. Co., v. Mississippi, 217 U. S. 433; Western Union Telegraph Company v. City of Richmond, 224 U. S. 160.

We are not concerned with the question of whether such sections provide the best method of preventing waste and protecting such rights. The determination of that question is a legislative prerogative. Chicago, B. & Q. R. Co., v. McGuire, 219 U. S. 549, 569; Block v. Hirsh, 256 U. S. 135. The question here is whether such provisions are reasonably calculated to prevent such waste and protect such rights and are not an unreasonable interference with the rights of such owners to enjoy their property.

The production of oil and gas in excess of transportation or marketing facilities or in excess of market demands results in aboveground storage. At the time this statute was enacted, as shown by the orders of the Commission, it resulted in large amounts of such storage in earthen reservoirs, with resultant waste through seepage and evap- [fol. 301] oration. It is a well known fact in the oil industry that oil can be best stored under ground. Furthermore, it is established by the evidence that to permit oil

wells to flow at their maximum flush production results in the use of an excessive amount of gas pressure, an uneconomical and wasteful use of gas energy in lifting the oil, and a tremendous loss in ultimate recovery. This is of particular importance in a pool such as the Oklahoma City pool where the wells are of tremendous depth and the cost of artificially raising the oil will be unusually great. It is important that the wells shall be permitted to produce with the lowest practical gas-oil ratio, to the end that the gas pressure shall be preserved throughout a long period and the greatest ultimate recovery of gas and oil obtained.

Sections 3 and 4 of the Act, when supplemented by proper rules and regulations of the Commission are reasonably calculated to prevent such waste and to protect such co-equal rights of the several owners of land over a common pool. And, in our opinion, are clearly within the competency of the legislature.

It is asserted by counsel for plaintiff that the statute and the orders have for their purpose an interference with the law of supply and demand, by decreasing the normal supply of oil and gas and thereby raising the price, and [fol. 302] that they are price-fixing in character. It may be that the restriction on production imposed by the statute will prevent a supply in excess of the market demands and thus indirectly tend to sustain the price of oil and gas. But such is not the main purpose of the statute, and the fact that it may have an indirect effect on prices does not, in our opinion, render it invalid.

Counsel for the plaintiff further contend that the provisions of section 6, authorizing the Commission to punish as for contempt a violation of its orders is a delegation of judicial power to a legislative branch of the government, in violation of section 1, Article 4, of the Oklahoma Constitution. The Commission has not invoked that provision of the Act for the enforcement of the proration orders against the plaintiff and the validity of such portion of section 6 is not here presented. If it is in fact invalid, the orders of the Commission may be enforced by appropriate proceedings in mandamus or injunction. 51 C. J. 83, section 149.

Validity of the Orders

Counsel for plaintiff contend that the orders themselves are void: First, because they have for their object the fixing of prices by limiting the supply of oil; second, because they are predicated on information furnished by agents of the Commission, who receive a salary for their [fol. 303] work from certain of the producers in the fields affected by such orders; and, third, because no lawful gauges have been taken of the wells in such fields, as required by section 5 of the Act.

The theory upon which the orders are predicated is that oil from a given pool shall not be produced in excess of the market demands therefor in order to prevent wasteful storage and wasteful use of gas pressure in lifting the oil.

Counsel for plaintiff assert that, since it is able to take oil in excess of the amounts permitted by such orders and to transport and market the same without the commission of any waste, a denial of its right so to do amounts to a deprivation of its property in contravention of the Fourteenth Amendment. The plaintiff is a so-called integrated producer; that is, it owns both producing wells, pipe lines, refineries and marketing facilities. Other producers have no pipe line, refinery or marketing facilities, and if they should be permitted to produce in excess of market demands they would have to store the same and this would result in waste. On the contrary, if plaintiff should be permitted to take all the oil it could utilize without waste, it would encroach upon the rights of other producers not having pipe line, refinery and marketing facilities, to take [fol. 304] from the common source of supply. Under these circumstances, we are of the opinion that the limiting of the taking to the market demands is a reasonable regulation for the prevention of waste and the protection of the co-equal rights of the owners of land over such pool. "Where the public interest is involved preferment of that interest over the property interest of the individual, * * * is one of the distinguishing characteristics of every exercise of the police power which affects property." Miller v. Schoene, 276 U. S. 272, 280, and cases there cited.

As observed with respect to the Act itself, the object of the orders is to prevent waste and to protect the co-

equal rights of the owners of land over the common pool, and the fact that such orders tend to prevent the oversupply of oil and gas in excess of market demands and indirectly affect the prices thereof, does not make them price-fixing in character, and for that reason invalid.

The employment by the Commission of agents and employees who are paid by groups of producers in the fields affected by such orders to gather the data and information on which such orders are in part predicated is subject to condemnation. It is only calculated to breed suspicion and distrust and to destroy confidence in the integrity of the Commission. However, the evidence does not establish that such agents and employees have been guilty of favor- [fol. 305] itism or dishonesty, or that the Commission has acted arbitrarily or discriminated in favor of the groups paying such agents. Furthermore, while the system is objectionable, it has been in vogue over a long period of time, during which a session of the state legislature occurred. Such legislature did not see fit to provide any funds with which to pay such agents and thereby gave implied legislative sanction to the practice.

While we think the practice of employing agents paid by producers interested in such orders should be discontinued, we find no basis in the evidence because thereof for striking down the orders.

The fact that the Seminole field is permitted a greater percentage of its potential production than is the Oklahoma City field is not necessarily a discrimination in favor of the former. The Seminole field is an older one, is more favorably located with reference to the large interstate pipe lines, and naturaly has a larger market demand. It has passed the period of flush production. These circumstances justify a larger percentage of allowable production for the Seminole field.

Section 5 provides that for the purpose of determining proportionate production under section 4, a gauge of each well shall be taken under rules and regulations prescribed by the Commission. The Act leaves the method and details [fol. 306] for taking such gauges to the Commission. If the gauges result in permitting each owner to take the same proportion of his actual potential production, it is immaterial what method of gauging is used or whether potential

production is determined by measurement of actual production. A gauge of the wells in the Oklahoma City field at the same time with all wells open to full production would be physically impossible. The available storage and transportation facilities would be wholly inadequate to handle the oil produced. The method employed in the Oklahoma City and Seminole fields arrived at approximately accurate results. The orders fixed the allowable of every producing well in the Oklahoma City field at substantially the same relative proportion of their respective potentials. They did likewise in the other fields. We think there was a substantial compliance with section 5 of the Act, and that no discrimination between producing wells resulted from the method by which the potentials thereof were determined.

The Validity of the State Court Proceedings

The facts with reference to such proceedings are set forth in paragraph 34 of the Third Amended and Supplemental Bill of Complaint and need not be repeated here. They are predicated on the provisions of section 9 of the Act. This provision is penal in character and is for the [fol. 307] purpose of punishing violations of the provisions of the Act itself, (not the orders of the Commission), as a criminal statute. For the reasons hereinbefore indicated, we think this section is void and that such proceedings in the state courts should be enjoined.

Interstate Commerce

We are clearly of the opinion that the scheme of proration is not invalid as a regulation of or burden on interstate commerce. It is true that a substantial portion of the oil produced in this state goes into the channel of such commerce. But in order to conflict with the regulatory power of Congress, there must be a direct burden thereon. In this case, the interference is entirely too remote in character. The principle is too well settled to require citation, that the congressional power of regulation attaches only when interstate transportation has begun. Proration enforced under state powers cannot be said to affect commerce in oil to which producers have acquired no title. While they have a right to take the oil, yet title does not

vest in it until it is reduced to possession. Ohio Oil Co. v. Indiana, supra; Rich v. Donaghey, 71 Okl. 204; Alexander v. King, 46 Fed. (2d) 235. The production of oil is analogous to the manufacture of goods or the mining of coal. Neither is interstate commerce, although the product may be later shipped to other states. Hammer v. Dagenhart, [fol. 308] 247 U. S. 251; Delaware L. R. Co., v. Yurkonis, 238 U. S. 439 See also: West v. Kansas Nat. Gas Co., 221 U. S. 229; Penna. v. West Virginia, 262 U. S. 553; Foster-Fountain Packing Co., v. Haydel, 278 U. S. 1.

These are the views of a majority of the Court. We have not taken the time necessary to prepare a more formal opinion, because we deemed it important to make an early disposition of the cause.

KENNAMER, District Judge, dissenting:

I concur in the opinion of the majority of the court, holding the penalty provisions of the Conservation Act unconstitutional, and that the Corporation Commission has power under the regulatory provisions of the Act to enter orders enjoining oil operators committing actual waste in the production of oil and gas. I dissent from that part of the opinion sustaining the orders of the Commission permitting the administration of the Conservation Act through privately paid agents of interested parties in the production and marketing of oil and gas. I am further of the opinion that the orders of the Commission are discriminatory and enforced in an unconstitutional manner. I shall file a formal dissenting opinion setting forth my views.

[File endorsement omitted.]

[fol. 309] IN UNITED STATES DISTRICT COURT

The attached revised and corrected dissenting opinion on final hearing is herewith filed in above entitled cause.

F. E. Kennamer, District Judge.

DISSENTING OPINION.—Filed Oct. 17, 1931

KENNAMER, District Judge (dissenting):

Under the provisions of the Act approved February 11, 1915 (S. L. 1915, p. 35), Secs. 7954-7963, inc., C. O. S. 1921,

the Corporation Commission of Oklahoma is vested with jurisdiction to hear any proceeding instituted by any person, firm or corporation, or the Attorney General on behalf of the State, involving any questions relating to the enforcement of the act, and to determine all questions of fact involved in such proceeding.

The object of complainant's action instituted in this court is to restrain the enforcement of certain orders of the Corporation Commission restricting the amount of oil complainant may produce from its properties within certain oil fields in the State of Oklahoma. Such orders are designated as proration orders. The Statute upon which the proration orders are bottomed is herein attacked as unconstitutional, and the orders made under the authority of the Statute are attacked as unconstitutional in that they deny the complainant due process of law. The Act involved is set out in full in the majority opinion.

The material allegations of complainant's bill and the evidence introduced at the trial of the cause disclose com- [fol. 310] plainant to be a corporation organized and existing under and by virtue of the laws of the State of New Mexico, and has been duly authorized to transact business within the State of Oklahoma, with its principal office and business located in the City of Enid, Oklahoma. It is engaged in the business of producing, transporting, refining and marketing petroleum and natural gas, and their products. It owns and operates an oil refinery at Enid, Oklahoma, with a daily capacity of approximately 17,000 barrels of crude oil. It refines and manufactures gasoline, kerosene, lubricating oil, waxes, and other products. That in connection with its refinery it operates approximately 725 tank cars for the distribution of its refined products among its customers and trade in Oklahoma, Texas, Colorado, Kansas, Arkansas, and many other states. It has and operates approximately 470 miles of pipe lines for the transportation of its products; 263 retail gasoline filling stations, and 256 wholesale stations in various states. It has 45 producing oil and gas leases and many undeveloped leases, all representing an investment of several million dollars. It has made a large investment in leases in the Oklahoma City field and has several producing wells equipped at an expenditure of several hundred thousand dollars. On or about June 30, 1930, the Corporation Com-

[fol. 311] mission of the State of Oklahoma entered an order entitled "Order No. 5181, Cause No. 10146," which prescribed the allowable production from each of the principal oil producing fields for the State of Oklahoma, which included the complainant's properties, and prescribed rules and regulations governing the production of oil in said fields, and on October 28, 1930, made Order No. 5369, and from time to time and until within a few days of the trial of this cause have amended and supplemented said orders so as to prorate the amount of production that may be produced from the various properties of the complainant based upon the estimated potential production of the various oil fields of the State of Oklahoma. Said orders purport to allow from time to time the number of barrels of crude oil to be produced daily from the oil fields of the State of Oklahoma, and said orders recite in support thereof that the number of barrels of crude oil allowed to be produced represent the reasonable market demands for crude oil from said state. The defendants have appointed and designated as their agents to enforce the orders, Otto B. Bradford, commonly known as an Umpire, for the Oklahoma City field, and Ray M. Collins, known as an Umpire, for the state at large and especially the greater Seminole field. These Umpires are paid large and lucrative salaries [fol. 312] through voluntary contributions made by various oil companies operating in the various oil fields of the State. These contributing oil companies have formed and designated an "Operators' Committee." The "Operators' Committee" is composed of representatives of oil companies that are competitors of complainant in the business of producing, and refining or marketing crude oil and its by-products.

The jurisdiction of this court to determine the constitutionality of the statute and the orders entered under the authority of the statute was not seriously questioned at the hearing. This is not an action against the state in violation of the Eleventh Amendment to the Constitution of the United States. An action to restrain an officer of the state from acting under a statute alleged to be in violation of the Constitution of the United States, or otherwise violating a citizen's constitutional right, is not a suit against the state. See Ex Parte Ayres, 31 Law Ed. 216, 123 U. S. 443, 8 S. C. 164.

Mr. Chief Justice White, speaking for a unanimous court, in Home Telephone & Telegraph Co. v. Los Angeles, 227 U. S. 278, 57 Law Ed. 510, 33 S. C. 312, held that the pro- [fol. 313] hibitions and guaranties of the Fourteenth Amendment to the National Constitution are addressed to, and control, not only the states, but also every person, whether natural or juridical, who is the repository of state power, and among other things said:

"Here again the settled construction of the Amendment is that it presupposes the possibility of an abuse by a state officer or representative of the powers possessed, and deals with such a contingency. It provides, therefore, for a case where one who is in possession of state power uses that power to the doing of the wrongs which the amendment forbids, even although the consummation of the wrong may not be within the powers possessed, if the commission of the wrong itself is rendered possible or is efficiently aided by the state authority lodged in the wrongdoer. That is to say, the theory of the Amendment is that where an officer or other representative of a state, in the exercise of the authority with which he is clothed, *misuses the power possessed to do a wrong forbidden by the amendment, inquiry concerning whether the state has authorized the wrong is irrelevant, and the Federal Judicial power is competent to afford redress for the wrong by dealing with the officer and the result of his exertion of power.*" (Italics mine.)

Suits in the Federal Court to restrain the Oklahoma Corporation Commission from using the color of their office to [fol. 314] deny a citizen or corporation rights guaranteed by the Fourteenth Amendment have been frequently maintained. Oklahoma Operating Co. v. Love, 252 U. S. 331, 64 Law Ed. 596, 40 S. C. 338; Oklahoma Gin Co. v. State of Oklahoma, et al., 252 U. S. 339, 64 Law Ed. 600, 40 S. C. 341. See also Georgia Power Co. v. Decatur, 281 U. S. 505, 74 Law Ed. 999, 50 S. C. 369; L. & N. R. R. Co. v. Garnett, 231 U. S. 298, 58 Law Ed. 229, 34 S. C. 48; Lake Erie & Western R. R. Co. v. State Public Utilities Commission, 249 U. S. 422, 63 Law Ed. 684, 39 S. C. 345; Yick Wo v. Hopkins, 118 U. S. 356, 30 Law Ed. 220, 6 S. C. 1009; Virginia v. Rives, 100 U. S. 313, 25 Law Ed. 667; 25 C. J., Sec. 53, page 743.

In Langford v. United States, 101 U. S. 341-346, 25 Law Ed. 1010, Mr. Justice Miller, speaking for the court, said:

"The maxim, that the King can do no wrong, has no place in our system of constitutional law, as applicable either to the government or to any of its officers."

If the national courts did not possess this jurisdiction "the Constitution, steel framed, of the national fabric would fall in ruin." Free institutions, personal liberty and property rights would be destroyed. See Looney, Attorney General of the State of Texas, v. Crane Co., 245 U. [fol. 315] S. 178, 62 Law Ed. 230, 38 S. C. 85. Mr. Chief Justic White in disposing of the same contention made, at page 191 said:

"There is a contention to which we have hitherto postponed reference, that the court below was without jurisdiction because the suit against the state officers to enjoin them from enforcing the statutes in the discharge of duties resting upon them was in substance and effect a suit against the State within the meaning of the Eleventh Amendment. But the unsoundness of the contention has been so completely established that we need only refer to the leading authorities. Ex Parte Young, 209 U. S. 123, 52 Law Ed. 714, 28 S. C. 441; Western Union Telegraph Co. v. Andrews, 216 U. S. 165, 54 Law Ed. 430, 30 S. C. 286; Home Telephone & Telegraph Co. v. Los Angeles, 227 U. S. 278, 57 Law Ed. 510, 33 S. C. 312."

In Terrace v. Thompson, 263 U. S. 197, 214, 68 Law Ed. 255, 44 S. C. 15, the Supreme Court of the United States held:

"Equity jurisdiction will be exercised to enjoin the threatened enforcement of a state law which contravenes the Federal Constitution wherever it is essential in order effectually to protect property rights and rights of persons against injuries otherwise irremediable."

The conclusion reached by my distinguished colleagues "That the statute is too indefinite and uncertain to be sustained as a penal statute," cannot be seriously contra- [fol. 316] verted. The drastic provisions of the statute subject an oil operator to a penlaty of $5,000.00 fine, 30

days in jail, or both, in the discretion of the court when such operator committed economic waste, underground waste, waste incidental to production in excess of transportation facilities or produces his oil in excess of reasonable market demands, and that his property in a suit by the State, through the Attorney General or any County Attorney, may be placed in an indeterminate receivership. It was held in Connally v. General Construction Co., 269 U. S. 385, 70 Law Ed. 322, 46 S. C. 126, that

"Any statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law."

The power of the State to provide reasonable regulations to prevent actual waste, or wasteful utilization in the production and marketing of oil and gas, is well established. Ohio Oil Co. v. Indiana, 177 U. S. 190, 44 Law Ed. 729, 20 S. C. 489; Lindsley v. Natural Carbonic Gas Co., 220 U. S. 61, 55 Law Ed. 369, 31 S. C. 337; Walls v. Midland Carbon Co., 254 U. S. 300, 65 Law Ed. 276, 41 S. C. 118. The reason for the rule is that waste of the natural resources of the State is not only detrimental to the common weal, but [fol. 317] also injuriously affects the rights of land owners over a common pool of oil or gas, and all such owners are entitled to an equal privilege of reducing oil and gas to possession. Ohio Oil Co. v. Indiana, supra. I cannot subscribe to the conclusion that the owners of land in a common oil pool own such oil and gas in common, and the right of one owner to reduce oil and gas underlying the surface of his land to possession is dependent upon the ability of another owner to reduce the oil and gas beneath the surface of his land to possession. No such rule of property exists in the State of Oklahoma.

The right of an owner of land within Oklahoma to drill wells and reduce oil and gas to possession which lies beneath his land is a property right protected by the Fourteenth Amendment to the Federal Constitution. The Oklahoma Supreme Court has repeatedly followed the rule that an estate in fee simple in lands in Oklahoma includes all oil and gas in place in and under the land so long as it remains therein, and the owner of such land has a vested

right to use it and to enjoy the profits accruing therefrom; since without the latter the former cannot be of value. Wright v. Carter, 97 Okla. 46, 223 Pac. 835; Green v. Biddle, 8 Wheat. 1-76, 5 Law Ed. 566; Terrace v. Thompson, 263 U. S. 315, 68 Law Ed. 274, 44 S. C. 15.

[fol. 318] In the case of Wright v. Carter Oil Co., supra, the Oklahoma Supreme Court said:

"The right to reduce oil and gas to possession is a valuable property right."

In the same case, the court held that

"oil and gas belong to the owner of the land and are a part of it so long as they are on it or in it and subject to his control, but when they escape and go into other lands, or come under another's control through the natural reservoir, the title of the former owner is gone."

Thus, an established rule of property has grown around oil and gas, and such property rights are subject to protection as other property rights.

In Ohio Oil Co. v. Indiana, supra, the Court said:

"On the other hand as to the gas and oil the surface proprietors within the gas field all have the right to reduce to possession the gas and oil beneath. They could not be absolutely deprived of this right which belongs to them without a taking of private property."

In West v. Kansas Natural Gas Co., 221 U. S. 229, 55 Law Ed. 716, 31 S. C. 564, the court in referring to the opinion of the court in Ohio Oil Co. v. Indiana, supra, said:

[fol. 319] "It surely cannot need argument to show that if they could not be deprived of the right to reduce the gas to possession they could not be deprived of any right attached to it when in possession."

The trial court in the cited case, in construing an act of the legislature of Oklahoma prohibiting the transportation of natural gas in interstate commerce, held (172 Fed. 545) that natural gas found within the territorial limits of a state was not a product which the state may conserve and preserve by law as a thing in which the people of the state

have a common interest, as wild animals, but that it was an absolute property right, of which the owner cannot be deprived without just compensation.

The Supreme Court of the United States in Brown v. Spilman, 39 Law Ed. 304, 15 S. C. 245, 155 U. S. 665, at page 669, said:

"Petroleum gas and oil are substances of a peculiar character, and decisions in ordinary cases of mining, for coal and other minerals which have a fixed situs, cannot be applied to contracts concerning them without some qualifications. They belong to the owner of the land, and are part of it, so long as they are on it or in it, or subject to his control, but when they escape and go into other land, or come under another's control, the title of the former owner is gone. If an adjoining owner drills his own land and taps a deposit of oil or gas, extending under his neighbor's [fol. 320] field, so that it comes into his well, it becomes his property. Brown v. Vandergrift, 80 Penn. St. 142, 147; Westmoreland Nat. Gas Co.'s Appeal, 25 Weekly Notes of Cases, (Penn.) 103."

While the state, in the exercise of its police power, has the power, through appropriate legislation, to protect the public morals, health and safety, it cannot take private property from one person and transfer it to another for the private use and benefit of such person. The exercise of the police power is subject to constitutional limitations. "The chief restriction on this class of legislation is that vested rights must not be disturbed." Dooley's Constitutional Limitations, page 744.

In Lawton v. Steele, 152 U. S. 133, 38 L. Ed. 385, 14 S. C. 499, the court said:

"To justify the state in thus interposing its authority in behalf of the public, it must appear first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. The legislature may not, under the guise of protecting the public interest, arbitrarily interfere with [fol. 321] private business, or impose unusual and unnecessary restrictions upon lawful occupations. In other

words, its determination as to what is a proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the Courts."

The state has no title to oil and gas in place, and is without power to appropriate the oil and gas in and under the lands of one owner to the use and benefit of another owner. The only interest the state has under its police power is to prevent actual waste and to provide equal privileges to every land owner to reduce such products to possession and place them in the channels of legitimate commerce. The state exceeds its constitutional authority when, under the pretence of preventing waste, it attempts to regulate market demands, and for the purpose of regulating and controlling the price at which the owner of oil and gas, after it has been reduced to possession, must market such product. It is plain from the provisions of Section 2 of the Act that it is a price fixing statute. The act empowers the Commission to determine at what price oil and gas may be marketed. In the presentation of the application for temporary injunction counsel for the defendants conceded that Section 2 of the Act was invalid as a price fixing statute. The orders of the Commission recite that because of [fol. 322] market demands the daily production of the State of Oklahoma must be restricted to approximately 550,000 barrels of oil daily, and the Commission attempts by its orders, not only to restrict the daily amount of production, but also to prorate the markets among the various oil pools of the state. It is only reasonable to infer from the language employed in the orders of the Commission and all the evidence introduced on the trial of the cause that the sole purpose of the Commission in restricting the amounts of daily production in the State of Oklahoma was for the purpose of requiring all owners of oil and gas to market it at what is commonly termed the "posted price." The "posted price" is simply a price agreed to be paid by the purchasing companies whose representatives substantially constitute the "Operators' Committee."

It is the contention of counsel for the defendants that if the amount of oil to be produced is not restricted under the proration orders of the Commission it will result in waste through storage of crude oil, especially storage in earthen tanks. Aside from a rule prohibiting storage in earthen

tanks the Commission has in no manner undertaken to regulate the storage of crude oil. It is a matter of common knowledge that millions of barrels of crude oil are now confined in storage. If the Legislature deems storage of oil [fol. 323] in earthen tanks wasteful, and there is no evidence that such practice has been engaged in, during recent years, it can pass a brief act prohibiting such storage. The evidence is uncontroverted that the complainant in this case has been and is capable of producing, refining and marketing its products without waste.

Producing, refining and marketing crude oil is not a public service business. The producer does not devote his property to a public use so as to give the state the power to regulate it as railroads and other public utilities are regulated. Charles Wolff Packing Co. v. Court of Industrial Relations, 262 U. S. 522, 67 Law Ed. 1103; and Tyson & Bro. v. Banton, 273 U. S. 418, 71 Law Ed. 718. It is also well settled that the Legislature, neither directly nor through the Corporation Commission, can regulate or fix the price of crude oil. The producer has the right under the Fourteenth Amendment to the National Constitution to fix his own price. Williams v. Standard Oil Company, 278 U. S. 235, 73 Law Ed. 287; Tyson & Bro. v. Banton, 273 U. S. 418, 71 Law Ed. 718; Charles Wolff Packing Co. v. Court of Industrial Relations, 262 U. S. 522, 67 Law Ed. 1103; Fairmont Creamery Co. v. State of Minnesota, 274 U. S. 1, 71 Law Ed. 893; and Ribnik v. McBride, 277 U. S. 350, 72 Law Ed. 913.

[fol. 324] With all deference to the opinion of my associates, I cannot escape the conclusion that Section 4 of the Act is no more nor less than a part of the legislative scheme to fix prices for crude oil and that it does not provide for a fair and equitable proportionate taking by separate operators in the common pool. Section 4 does not purport to require equitable taking except "Whenever the full production from any common source of supply * * * can only be obtained under conditions constituting waste, as herein defined," which must mean that a person "having the right to drill into and produce oil from any such common source of supply, may take therefrom only such proportion of all crude oil and petroleum that may be produced therefrom, without waste, as the production of the well or wells of any such person, firm or corporation, bears to the total produc-

tion of such common source of supply," whenever, quoting Section 2, "there is not a market demand therefor at the well at a price equivalent to the actual value of such crude oil or petroleum," as determined by the Commission. Section 4 means that whenever there is not a market at the price fixed by the Corporation Commission for "the full production from any common source of supply of crude oil or petroleum in this state" then "any person, firm or corporation having the right to drill into and produce oil from [fol. 325] any such common source of supply, may take therefrom only such proportion of all crude oil and petroleum that may be produced therefrom" and sold "at the well at a price equivalent to the actual value of such crude oil or petroleum" as determined by the Corporation Commission under the authority attempted to be conferred upon it by Section 2 of the Act. If this is not the correct construction and the Legislature intended to authorize the Commission to enforce in the oil fields "a just distribution, to arise from the enjoyment" by the operators in that field "of their privilege to reduce to possession," then why did not the Legislature prohibit an operator from pumping his wells unless his adjoining neighbor in the same pool has facilities for pumping oil from the common source (and an operator using a pump may restrain an adjoining operator from leaving open unproducing wells on his property the effect of which is to interfere with the action of the pump. Higgins Oil & Fuel Co. v. Guaranty Oil Co., 145 La. 233, 82 So. 206, 5 A. L. R. 411 and note; Bassel v. West Virginia Central Gas Co. 86 W. Va. 198, 103 S. E. 116, 12 A. L. R. 1398; Thornton on Oil & Gas, 3rd ed., vol. 1, sec. 32) and why did not the Legislature require an operator to shut down his offset wells in the event his adjoining neighbor's wells are choked up by drilling trouble or otherwise and [fol. 326] thereby prevented from producing? The so-called proportionate taking as provided for by Section 4 only becomes operative in flush pools or in pools the full production of which can not find a market "at the well at a price equivalent to the actual value of such crude oil or petroleum" as determined by the Corporation Commission. No provision is made prohibiting an operator from shooting his wells (Thornton on Oil & Gas, 3rd ed. vol. 1, sec. 33) and thereby artificially increasing the production of oil therefrom, although his neighbor may not be able to shoot his

wells. It is clear to my mind that Section 4 is nothing more than a mere mask behind which to disguise the price fixing features of the statute. Section 4 clearly contemplates markets and not an equal distribution of the oil in a common pool. If "a just distribution, to arise from the enjoyment * * * of their privilege to reduce to possession," using the language of the Ohio Oil Company case, was the purpose of Section 4 of the Act, it is strange it did not provide for taking into consideration acreage in figuring out the proportionate taking. Yet Section 4 says that an operator can take out "only such proportion of all crude oil and petroleum that may be produced therefrom, without [fol. 327] waste, as the production of the well or wells of any such person, firm or corporation, bears to the total production of such common source of supply." Acreage is ignored and an operator with two 5,000 barrel wells on 5 acres may take out of the common source of supply, under the provisions of Section 4, as much oil as an operator with two 5,000 barrel wells on 20 acres in the same field. Proportionate taking per well is wholly inequitable if the Legislature intends to secure "a just distribution, to arise from the enjoyment * * * of their privilege, to reduce to possession," because the operator with 20 acres has four times as much privilege as the operator with 5 acres in the same field. As further evidence that Section 4 is concerned with markets and not with proportionate taking, the Commission is authorized "to prevent unreasonable discrimination in favor of any one such common source of supply as against another," which must mean that the Commission is authorized to prorate markets because we can not attribute to the Legislature the absurdity involved in an authorization to the Commission to prohibit, for instance, the Oklahoma City field from draining the Seminole field or the Tonkawa field, separated by many miles and shown by the undisputed evidence to be incapable of draining any other field.

[fol. 328] Severing Section 2 from the Act and declaring or conceding its unconstitutionality does not take it out of the Act when we come to ascertain the legislative intent. An unconstitutional law or part of a law may be considered in order to ascertain the intent of the Legislature in another law or a part of the same law. Lewis' Sutherland Statutory Construction, 2nd ed. Vol. 2, Sec. 452.

The Illinois Supreme Court in Baird v. Hutchinson, 179 Ill. 435, 53 N. E. 567, said, "The meaning of the Legislature must be gathered from all they have said, as well from that which is ineffective from want of power, as from that which is authorized by law."

Mr. Justice Van Devanter, in Davis v. Wallace, 257 U. S. 478, 66 Law Ed. 325, 42 S. C. 164, applied this rule and said that

"Where an excepting provision in a statute is found unconstitutional, courts very generally hold that this does not work an enlargement of the scope or operation of other provisions with which that provision was enacted and which it was intended to qualify or restrain."

The Court in that case also held that declaring a section of a statute unconstitutional

[fol. 329] "does not make the provisions any the less a key to the intention of the legislature."

Section 2 permeates the whole statute. It is the foundation of the statute and without it Sections 3 and 4 are too vague and uncertain to vest any power in the Corporation Commission to make the rules and regulations assailed in this case. The Act nowhere undertakes to vest the Corporation Commission with power to define waste. See Hewitt v. Board of Medical Examiners, 148 Ca. 590, 84 Pac. 39; Cline v. Frink Dairy Co., 274 U. S. 445, 71 Law Ed. 1146.

As shown by the Commission's various orders from June 30th, 1930, down to date, it has purported to find a market demand for the entire State of Oklahoma, and then no doubt acting under the last clause in Section 4 of the Act, allocated those markets between various fields, a thing I do not believe the Legislature can constitutionally authorize as it in effect takes one man's market and gives it to another. In the Commission's order of June 30th, 1930, it found that the existing wells in Oklahoma following the 1st day of July would produce approximately 1,362,000 barrels per day and "That the daily demand in Oklahoma is and will be approximately 650,000 barrels per day during the months [fol. 330] of July, August and September, 1930." In the decretal part of the order it distributes this market among the various fields, naming them in a schedule setting forth

their estimated potential and estimated actual production. This same scheme was followed in the succeeding orders. The Commission in finding that the market demand in Oklahoma for certain months was a certain number of barrels evidently meant a market at the posted price, the then existing price, and not a market at a lower price. It is true that there may not be a market for more than 650,000 barrels per day at $1.07 a barrel, whereas, there may be a market for one million barrels per day at 75 cents per barrel.

Collins, umpire for the state at large, testified that although he did not make recommendations upon which the Commission assigned market demand in the Oklahoma City field for the month of January, 1931, he did make recommendations for the Seminole and the balance of the state, and that although he had nothing to do with assigning market demands to the respective fields he made recommendations to the Commission. On re-examination Collins testified that he tried to get an increase of the market demand for the Oklahoma City field but that in doing so he never considered the price; that he never tried to get a market at a price below the posted price because it would [fol. 331] be nearly impossible to find a seller, and that he had never considered it his business to try to get any market below the market price, all of which goes to show that the Commission's so-called findings of market demands were based on a finding of the ability to sell at the then posted price and not at a lower price.

Defendants point to the enormous waste of gas and casing-head gas in the Oklahoma City field and introduced D. B. Dow as a witness who testified that a valuation of six cents a thousand the total value of gas and gasoline wasted during the year would be $29,400,000.00 if the field were opened up. But the Commission had made no order requiring the producers to operate their wells on such gas-oil ratio as will conserve the gas. The Commission's orders have been directed at the suppression of the production of oil. During oral argument it was stated by counsel, and not denied, that the record before the Special Master shows that one 18 barrel oil well is operated under the Commission's rules in the Oklahoma City field at an expenditure of over 3,000,000 cubic feet of gas per barrel. The Commission must therefore either have construed Section 7964

of the Oklahoma Comp. Stats. 1921, as authorizing the waste of gas without restriction when produced from an [fol. 332] oil well, or otherwise has refused to enforce the statute passed in 1915 embodied in Sections 7920 to 7922, inclusive, of the Oklahoma Comp. Stats. 1921, prohibiting the production of natural gas in such manner and under such conditions as constitute waste and providing that "whenever natural gas in commercial quantities or a gas bearing stratum, known to contain natural gas in such quantity, is encountered in any well drilled for oil or gas in this state, such gas shall be confined to its original stratum until such time as the same can be produced and utilized without waste, and all such strata shall be adequately protected from infiltrating waters." Not having taken any steps to conserve the gas as authorized and directed by the Oklahoma Statutes of 1915, embodied in Sections 7920 to 7922, Oklahoma Comp. Stats. 1921, my conclusion is that the Commission has not concerned itself with conservation of the natural resources but with the suppression of the production of oil in order to decrease the supply and thus increase the price.

The Statutes involved in Lindsley v. Natural Carbonic Gas Company, supra, Ohio Oil Co. v. Indiana, supra, and Walls v. Midland Carbon Company, supra, were enacted to prevent physical waste or the wasteful utilization of the oil or gas or water. There is no contention in this case that [fol. 333] the complainant has wasted or will waste any of the oil or use it for a purpose other than useful.

In view of the fact that the Oklahoma Act does not (a) take into consideration acreage, or (b) prohibit the use of pumps to create an excessive flow of oil, or (c) closing offset well or wells when a stoppage of an adjoining operator's well is caused by losing the casing or other accident, or (d) make any provisions for equitable taking except "where the full production from any common source of supply of crude oil or petroleum * * * can only be obtained under conditions constituting waste," which must mean where there is not a sufficient market at a fixed price for all the oil, I conclude that the Act and the orders of the Commission made in pursuance thereof were intended to accomplish one result and that is price fixing by regulating the law of supply and demand by statute and rules of the Commission.

In McMillan, et al. v. The Railroad Commission of Texas, et al., 51 Fed. 2d, 400, a recent decision by three Federal Judges, the court declined to be deceived by the Railroad Commission's proration orders purporting to have been made under the authority of the Texas oil conservation statute. Circuit Judge Hutcheson, speaking for the court composed of himself and District Judges West and Bryant, said:

[fol. 334] "*Presumptively valid though such acts are, courts, bound to give effect not to fictions but to realities, may not in construing them, close their eyes to what all men can see. Disregarding pretense, subterfuge and chicane, courts must, looking through form to substance, ascertain the true purpose of a statute not from its recitals of purpose, but from the operation and effect of it as applied and enforced.* Smith vs. Ry. Co. 181 U. S. 248; Bailey vs. Drexel Furn. Co. 259 U. S. 20; Lockner vs. New York, 198 U. S. 64; Meyer vs. Nebraska, 262 U. S. 390; Henderson vs. Mayor of N. Y., 92 U. S. 259; Chy Lung v. Freeman, 92 U. S. 275. * * *

"Especially must this be so when, as here, under the *thinly veiled pretense of going about to prevent physical waste,* the Commission has, in *cooperation with persons interested in raising and maintaining prices of oil and its refined products,* set on foot a plan which, seated in a desire to bring supply within the compass of demand, derives its impulse and springs from, and finds its scope and its extent in the attempt to control the delicate adjustment of market supply and demand, in order to bring and keep oil prices up." (Italics mine.)

In Near vs. State of Minnesota (advance Sheet, p. 842, No. 16), Mr. Chief Justice Hughes, speaking for the court, said:

"With respect to these contentions it is enough to say that in passing upon constitutional questions the court has regard to substance and not to mere matters of form, and [fol. 335] that, in accordance with familiar principles, the statute must be tested by its operation and effect. Henderson v. Mayor, 92 U. S. 259, 268; Bailey v. Alabama, 219 U. S. 219, 244; United States v. Reynolds, 235 U. S. 133, 148, 149; St. Louis, Southwestern Railway Company v.

Arkansas, 294 U. S. 350, 362; Mountain Timber Company v. Washington, 243 U. S. 219, 237."

I think the above rule should be applied in this case and if applied it is plain that the purpose of the Act and the Commission's rules and regulations is to control prices of crude oil.

Special counsel appointed by the Governor of the State to appear and represent the interest of the state on the trial of this case stated in his brief and in his oral argument that the practice of employing umpires, charged with the duty of executing the orders of the Commission, under the control of monopoly and paid by the Operators' Committee, was iniquitous. It is a matter of common knowledge that the Governor of the State just a few days prior to the final arguments on submission of this case to the court for decision, issued a public proclamation advising the purchasers of crude oil that unless the price was raised to one dollar per barrel he would close down by Executive Order all the prorated wells in the oil fields of Oklahoma [fol. 336] and call out the State Militia to enforce such order. It is a fact that he has executed such order by placing the wells of the complainant, and other producers, under martial law for the reason that the price of oil has not been raised to one dollar per barrel, and he bases his authority for such action, on the provisions of the Act in controversy. This constitutes a construction of the Act in question by the executive officers of the State. If there ever existed any doubt as to the intent of the legislature in vesting the Corporation Commission with authority to enter proration orders restricting the production of oil and gas from "any common source of supply," which has involved the production of oil in so much uncertainty, surely no such doubt can longer exist. The Act does not define "common source of supply," nor does the evidence shed any satisfactory light upon what is a "common source of supply." It only subjects the oil producer, under the circumstances involved, in speculation and conjecture and forces him to market his oil at the price determined to be in accordance with what the Commission determines to be reasonable market demand.

The Supreme Court of the United States in Yick Wo v. Hopkins, supra, held that public officers charged with the

administration of a law, thus representing the state itself, may so oppressively enforce the law so as to amount to a [fol. 337] practical denial of the equal protection of the laws secured by the Fourteenth Amendment to the Constitution of the United States. The court at page 373 said:

"Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution."

It does not only appear from the evidence introduced in this case that the orders of the Commission are grossly discriminatory, but we have the solemn admission of counsel representing the Governor of the State that the law in its operation under the sanction of the Commission is administered under the control of monopoly. Furthermore, it appears from the official pronouncements of the Governor of the State that he assumes the Act, authorizes price fixing and on that construction of the Act he has fixed a minimum price of $1.00 per barrel and has closed the oil fields until that price is paid. In addition to the admission of counsel for the Governor that the administration of the law is under the domination of monopoly, the evidence [fol. 338] discloses that the umpires, acting as the agents of the defendants in the administration of the law and in violation of the public policy of the State, are receiving lucrative salaries, one in the sum of $24,000.00 per year, with a large expense account, and the other in the sum of $7200.00 per year, from operating companies in the prorated oil fields, and that the orders of the Commission are based substantially upon information and evidence furnished by such umpires. Section 1570 C. O. S. 1921, makes it an offense for any executive officer to receive any emolument, gratuity or reward for attempting or deferring the performance of any official duty, and the person violating the same is guilty of a misdemeanor. Section 1561 C. O. S., 1921, makes any person who executes any of the functions of a public office without having taken and duly filed the oath of office as required, guilty of a misdemeanor, and

forfeits his right to such office. Umpires acting as agents of the Corporation Commission are public officers when appointed and selected in the manner required by the Act. The manner of selection and payment of the Umpires charged with the duty of administering the law is contrary to public policy and sound morals, and sufficient to render the orders of the Commission so administered as violative of the constitutional rights of the complainant. To say that the legislature has been in session since the [fol. 339] practice has been followed and has not corrected the evil is no protection to the complainant. See Somerset Bank v. Edmond, 76 Ohio St. 396, 11 L. R. A. (N. S.) 1171.

In Tumey v. Ohio, 273 U. S. 510, 71 Law Ed. 749; in an opinion by Mr. Justice Taft, the court said:

"But it certainly violates the Fourteenth Amendment and deprives the defendant in a criminal case of due process of law to subject his liberty or property to the judgment of a court, the Judge of which has a direct, personal, substantial, pecuniary interest in reaching a conclusion against him in his case."

Manifestly it is unfair to the complainant to be controlled by an umpire in the production of its oil, selected by and paid by its competitors. Such a course of conduct is unfair and fundamentally unsound, and the orders of the Commission authorizing any such course of conduct should be stricken down as violative of due process of law.

The Commission's power under Section 4 of the Act remains in a state of suspension until a legal gauge of each well has been made as required by Section 5 of the Act. The Commission can not delegate to the individual operators, private persons, the power to gauge their own wells under the supervision of umpires paid by private [fol. 340] persons and corporations. Before the Commission can make and enforce any order or rule under Section 4, if that section is valid, it must cause a gauge of the wells to be made by some state official or employee of the Commission. It cannot delegate that authority to the operators and make the report of the operators to the umpire conclusive evidence of the potential production of the wells. No operator can determine the amount he is permitted to withdraw from the common source of supply

"whenever the full production from any common source of supply crude oil or petroleum * * * can only be obtained under the conditions constituting waste," or determine what is an equitable and fair taking from a common source of supply until all the wells in the field have been legally gauged. The Commission could not delegate the authority to gauge wells to the Operators' Committee or to the operators themselves.

In State v. Crawford, 104 Kans. 141, 177 Pac. 360, 2 A. L. R. 880, the court said that

"The Legislature cannot delegate to private individuals and private associations of persons power to make obligatory rules concerning the management and care of property, nor provide that the breach of such rules shall be a penal offense."

[fol. 341] This principle is upheld in Washington, ex rel. Seattle Title Trust Co., v. Roberge, 278 U. S. 116, 73 Law Ed. 210, and Eubank v. Richmond, 226 U. S. 137, 57 Law Ed. 156, 33 S. C. 76, 42 L. R. A. (N. S.) 1123.

In my opinion complainant is entitled to a permanent injunction restraining the defendants from enforcing the rules and regulations insofar as they restrict the plaintiff's right to produce oil from its wells so long as it can do so without committing actual waste. The consuming public is entitled to purchase the refined products of crude oil in markets free from the control of monopoly and where fair competition prevails.

[File endorsement omitted.]

[fol. 342] In United States District Court, Western District of Oklahoma

No. 1156. Equity

Champlin Refining Company, a Corporation, Plaintiff,

vs.

Corporation Commission of the State of Oklahoma et al., Defendants

Final Decree—Filed Sept. 11, 1931

This cause came on to be further heard on this 5th day of August, 1931, and was argued by counsel, and the court hav-

ing made and filed herein its findings of fact and conclusions of law; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows, viz.:

That due notice of such hearing was given to the Governor who appeared throughout the trial thereof by his special counsel, Chas. J. West, and the Attorney General of the state of Oklahoma and to the other defendants in the suit, such notice so given being in all respects as required by Sec. 266 of the Judicial Code, Sec. 380, Title 28, U. S. C. A., and that the court has jurisdiction of the parties to, and the subject-matter of this action; that sections 1, 3, 4, 5, 6, 7 and 10 of the Act of the Legislature of Oklahoma, Session Laws, 1915, page 35, approved February 11, 1915 (being Sections 7954, 7956, 7957, 7958, 7959, 7960 and 7965, Compiled Oklahoma Statutes 1931), entitled, "An Act defining and prohibiting the waste of crude oil or petroleum, providing for the equitable taking of the same from the ground and con- [fol. 343] ferring authority on the Corporation Commission, prescribing the penalty for the violation of this Act, and declaring an emergency," are valid and are not in contravention of the Commerce Clause nor of the Fourteenth Amendment to the Constitution of the United States (except that, since it is not involved herein, the court does not pass upon the question raised as to the validity of the provisions of Section 6 of said Act authorizing the Corporation Commission of Oklahoma to punish as for contempt a violation of its orders, rules and regulations); that the orders, rules and regulations herein attacked by the plaintiff, which were issued by the Corporation Commission of Oklahoma pursuant to the said provisions of said Act and which are known as "Proration Orders," are valid and should be observed by the plaintiff; to all of which the plaintiff excepts; that Section 8 and 9 of said Act (Sections 7961 and 7962 of the Compiled Oklahoma Statutes, 1921), being the penalty provisions of said Act, are not valid; to which the defendants and each of them excepts; that the defendants, J. Berry King, Attorney General of Oklahoma, and Lewis R. Morris, County Attorney of Oklahoma County, Oklahoma, and each of them, their servants and employees be, and they are hereby perpetually enjoined and restrained from enforcing or attempting to enforce the provisions or any part thereof of said Sections 8 and 9 of said Act; to which the defendants and each of them excepts; that all other relief

sought by the plaintiff be and the same is hereby denied, to which the plaintiff excepts; and that each party shall pay its own costs herein laid out and expended; that jurisdiction of this cause is reserved to the extent of adjudging upon the order of June 13, 1931, any claims for damages [fol. 344] by reason of drainage or otherwise which may be asserted by the interveners or any of them against the plaintiff and to hear and determine matters pertaining to the bond given thereon to indemnify such interveners and adjoining or adjacent owners.

September 11, 1931.

John H. Cotteral, United States Circuit Judge. Orie L. Phillips, United States Circuit Judge.

I dissent to the foregoing except that portion thereof which holds invalid the provisions of Sections 8 and 9 of said Act and enjoins the enforcement thereof.

F. E. Kennamer, United States District Judge.

[File endorsement omitted.]

[fols. 345-408] Petition for rehearing and exhibits thereto, covering 64 pages, filed September 11, 1931, omitted from this print. It was denied and nothing more by order filed September 24, 1931.

[fol. 409] IN UNITED STATES DISTRICT COURT

ORDER DENYING PETITION FOR REHEARING—Filed Sept. 24, 1931

This cause came on to be heard this 16th day of September, A. D. 1931, on the Petition for Rehearing herein, and the Court having considered said petition and being fully advised in the premises, it is ordered, adjudged and decreed that said petition be and the same is hereby denied. To all of which the plaintiff excepts.

John H. Cotteral, United States Circuit Judge. Orie L. Phillips, United States Circuit Judge.

I am of the opinion that such petition should be granted and therefore dissent from the foregoing order.

F. E. Kennamer, United States District Judge.

[File endorsement omitted.]

[fol. 410] IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

Equity. No. 1156

CHAMPLIN REFINING COMPANY, a Corporation, Plaintiff,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA et al., Defendants

Narrative Statement of the Evidence under Equity Rule 75-B—Filed Oct. 17, 1931

CAPTION

The following is Plaintiff-Appellant's condensed statement in narrative form of all of the testimony introduced together with all exhibits offered in evidence upon the final hearing in the above entitled cause upon behalf of Plaintiff-Appellant and pursuant to Equity Rule 75-B, lodged in the Clerk's office for the examination of the Defendants as provided by said Rule; together with like condensed statement in narrative form of all of the testimony introduced, together with all exhibits offered in evidence upon the final hearing in the cause upon behalf of Defendants-Appellees, said narrative statement in that behalf having been prepared by said Defendants-Appellees and accepted by Plaintiff-Appellant as so prepared without change or modification, except that Plaintiff-Appellant does not assume responsibility for the Defendants-Appellees' narrative of such testimony in the first person, thereby indicating affirmative statements in a form not so made.

That on the 29th day of June, 1931, the above cause came on for final hearing, pursuant to assignment before Honorable John H. Cotteral, Circuit Judge, Honorable Orie L. Phillips, Circuit Judge, and Honorable Franklin E. Kennamer, District Judge.

[fol. 411] APPEARANCES

That the following appearances were noted:

For the Plaintiff: Harry O. Glasser, H. G. McKeever, George S. Ramsey, Edgar A. de Meules.

For the Defendants: Jesse A. Ballard, Assistant Attorney General of the State of Oklahoma; W. P. Z. German, J. H. Miley, E. S. Ratliff.

For the Governor of Oklahoma: Charles J. West.

ERNEST J. SLATER thereupon called as a witness on behalf of the Plaintiff, being first duly sworn, in substance testified as follows:

Direct examination.

By Mr. Glasser, of counsel for plaintiff:

That he resides at Enid, Oklahoma, and is and has been Refinery Superintendent for the Champlin Refining Company for three and one-half years last past; was connected with a number of companies in various parts of the United States, in like and other capacities since 1906; that Counsel for the Defendants then admitted that Plaintiff has a refinery which he thought could be visualized without photographs, and thereupon specifically admitted the allegations of Paragraphs V and VI of the Bill, with the exception that some of Plaintiff's leases in the Oklahoma City field were acquired after proration was in force; that the further qualification was then made that

"We do not admit that there are no co-relative leasehold owners of oil and gas rights in the Garfield pool";

and did admit Plaintiff had drilled wells in the Oklahoma City field that "doubtless cost $1,250,000.00"; that Defend- [fol. 412] ants were not prepared to admit more than that said wells so drilled "have a large potential capacity"; that an effort to make further agreement upon the facts was suspended until the next day; that Plaintiff thereupon announced that before the witness be withdrawn, Plaintiff desired to offer in evidence an aerial photograph of its refinery identified as its Exhibit No. 1, and upon objection to its competency, relevancy and materiality, was over the objection of the Plaintiff excluded.

Witness thereupon withdrawn without further examination.

R. L. CLIFTON, called as a witness on behalf of the Plaintiff, being first duly sworn, in substance testified as follows:

Direct examination by Mr. Glasser, of counsel for plaintiff:

That he resides in Enid, Oklahoma, by occupation Geologist and Petroleum Engineer, and so employed by the Cham-

plin Refining Company for more than six years last past; holds the degrees of A. B. and A. M.; belongs to scientific societies, chief among which are American Association of Petroleum Engineers, and American Institute of Mining and Metallurgical Engineers; has had occasion to familiarize himself in a technical way with the Oklahoma City and Seminole oil fields, as well as all other fields in the State of Oklahoma; had known the Oklahoma City field area before any development was undertaken there; has prepared a chart identified as Plaintiff's Exhibit No. 7, and so offered as a part of the direct examination of the witness, upon which chart is shown the development of the area, the location of wells, the structural conditions of the field indicated by contours drawn on the top of the sub-surface bed known as the Checker Board lime;

That the east limit of the Wilcox sand or upper Simpson formation is delineated upon said map by a red line, so designated; that the limits of the Siliceous Lime or Arbuckle Limestone production are also delineated and so designated thereon by a red Contour line, that said map indicates the location of the Plaintiff's pipe line and its leases—colored in red—in the Oklahoma City field; that the [fol. 413] Plaintiff's pump station and tanks located in Section 30, Township 12 North, 2 West, are indicated upon said map; that the witness thereupon indicates by marking with blue pencil, the route of Plaintiff's pipe line within the area included upon said map; that said map, in so far as the witness has been able to check, is accurate as of June 1, 1931; that the location of the discovery well in the Oklahoma City field, is indicated upon the map by an arrow, above which is written the words, "Discovery Well"; that at this juncture, Mr. Ramsey, of Counsel for the Plaintiff, stated to the Court that

"The purpose of the map is to give some assistance in gathering the effect of the evidence. The Plaintiff proposes to show that there are four distinct oil producing zones in the Oklahoma City field, and that the Corporation Commission is and has been proceeding upon the theory that it is a common pool; that is, simply a pond of oil beneath the ground, and as a result thereof so classifying all wells in said field as from a common source for production purposes, which the Plaintiff claims to be highly discriminatory";

That said "Discovery Well" was completed December 8, 1928, into the Arbuckle or siliceous lime area at a depth of approximately 6550 feet; that the Wilcox sand is found from 6210 to 6450 feet;

That objection was made by Mr. German, of Counsel for the Defendants,

"to any evidence destined to support a contention that in the Orders complained of, the Corporation Commission has not separated the producing zones, so that the percentage of allowable production from one would be different from that in the others, for the reason that such question has not been plead and is not in issue";

that the objection was sustained by Judge Phillips, ruling that

"There is no issue presented by this Bill predicated on the fact that the Orders are general as to the several sands";

but that

"if Plaintiff desired to amend its pleading, it might do so";

[fol. 414] That the following Amendment of the Bill was thereupon dictated into the record:

"That the rules, regulations and orders of said Commission, as hereinbefore set forth, are void, in that without regard to the fact that oil, as produced in the Oklahoma City area, is so produced from four separate producing zones totally different in geological construction, and that oil may be taken from a given one of said zones without necessarily penetrating or in anywise affecting any of the remaining zones; and that by reason of such arbitrary Orders due effect has not been given to the discretion vested in the Corporation Commission by the complained of Act of the Legislature, wherefore the entire rules and regulations of the Corporation Commission in this respect, and all Orders entered therein are unconstitutional and void as discriminatory";

that objection to the Amendment was made, for the reason that it comes too late and introduces a new issue into the case, which objection was overruled by Judges Phillips and Kennemer, and sustained by Judge Cotteral;

Thereupon, a chart which had been marked as Plaintiff's Exhibit No. 8, was identified by the witness, as a chart which he had prepared, consisting of two figures;

Figure 1, being a representation of a normal Ordovician (geologic system or time division of rocks) column or section;

Figure 2, delineates the actual attitude or position of the ordovician geologic column or section of the Oklahoma City field;

that the word "Ordovician" signifies a time division in rocks of sedimentary origin as distinguished from primary rocks of igeneous origin;

That Figure 2 of said chart, discloses in detail an east-west cross-section of the Ordovician beds in the Oklahoma City field and indicates a buried faulted anticlinal ridge upon which truncation has removed the upper portion of the Arbuckle limestone near the "fault" line, indicated to the extreme right of the Figure by an inclined vertical line in black, and has likewise removed progressively westward the up-tilted beds overlying the Arbuckle limestone; namely, [fol. 415] the Johnson sand zone, the School Land sand zone, the Wilcox sand zone, and the Simpson limestone, which limestone is likewise indicated in blue color to the right of the "fault" line;

That overlying the defined plane of truncation exist a series of shales and limestones of the Pennsylvania age, which serve as a cap-rock to hold the oil and gas in the producing zones of the older Ordovician beds; that said Figure also indicates the location and depth of the Champlin wells in the respective producing formations in which each of same has been drilled;

That the "Discovery Well" did not penetrate any of the other producing zones by reason of the nature of the structure, as indicated by the chart; that the first series or bed in the field to produce is that area indicated as the Arbuckle limestone; that the next producing area is the Johnson (or Kinter lime) sand zone, which lies to the westward on the flanks of the truncated uptilted Arbuckle beds, and may be described as being composed of sandy limestones, Dolomitic limestones and sand, with the sands predominating, and is sometimes referred to as the basal Simpson formation, the local name in the field for this particular section being Johnson sand or Kinter lime section;

That the next producing zone is the School Land sand, which lies westward and on the flanks of the truncated, uptilted Johnson sand or Kinter lime section; this section consists of sands, sandy green shales, blue green shales, and thin beds of Dolomitic lime, very fine in texture and of low porosity;

The presence of water has not yet been shown in this section, although water has been found to exist in the Arbuckle limestone section to the east, and much water has been found in the Johnson sand or Kinter lime section immediately below the School Land sand to the east on the flanks of the structure;

[fol. 416] The oil and gas production in the Arbuckle, as well as in the Johnson or Kinter, is prolific, and is found in the School Land section in from three to five lenses; that the oil and gas production from this section, in the main, is not prolific, but the unusual fact remains that water does not seem to be present in the section;

That the next producing zone is the Wilcox, lying on the west flank of the School Land sand, and is by far the more prolific of all the producing zones in said field; that the recovery upon the average from the Wilcox area will be anywhere from 50,000 or 90,000 barrels per acre; from the Arbuckle limestone on the average 12,500 barrels per acre, and from the Johnson and School Land sands upon the average approximately 25,000 to 30,000 barrels per acre; that the Wilcox sand, depending upon where it is first encountered in the structure, varies from one foot to 160 feet in thickness; that the upper part of the sand is gone, the base thereof dipping from the east, arranges the sand so that it pinches out to the east; that wells located along the east limit of the Wilcox sand will therefore penetrate but a few feet thereof, while the ones located farther back will encounter the maximum thickness of the sand; that the Wilcox sand is noted for its high degree of permeability and porosity; that this sand, by reason thereof, permits a maximum space for reservoir, and is therefore capable of prolific and rapid production; that the Wilcox sand also carries water; that the Plaintiff's wells in the Wilcox sand area, so indicated upon the chart, are Central No. 1, No. 2, No. 3 and No. 4; Eckroat No. 1; Shilling No. 1 and Haden No. 1 (which also produces from the School Land sand of the Simpson formation); that McCalep No. 1 penetrates the

School Land sand zone and the upper part of the Johnson sand zone, and produces oil from four lenses of that part of the Simpson formation; that Seal No. 1 and Seal No. 2 have penetrated sands in the School Land sand zone only, and produce from no other section;

[fol. 417] That it is possible to simultaneously produce wells in the Oklahoma City field from,

(a) the Wilcox sand only;

(b) a part of the Wilcox and a part of the School Land sand;

(c) the School Land sand only;

(d) a part of the School Land sand and a part of the Johnron (or Kinter lime) sand;

(e) the Johnson (or Kinter lime) sand only;

(f) all of the Johnson (or Kinter lime) sand and a part of the Arbuckle lime area;

(g) the Arbuckle lime area only;

depending upon the location of the well on structure; in other words, production may be had in said field from any of the drilling combinations hereinbefore set forth; that the chart so identified as Plaintiff's Exhibit No. 8, conforms with the opinion of sound Engineers and competent Geologists;

That Plaintiff thereupon offered said charts as so identified in evidence, to which offer the Defendants object,

"in so far as it is intended to support the issue that the separate zones have not been separately classified by the Commission; otherwise, we have no objection.";

The objection was overruled, to which the Defendants except.

[fol. 418] Thereupon, a recess was taken until 2:00 o'clock P. M. of the same day, at which time Court reconvened and all parties present as heretofore, the trial of the foregoing cause was resumed and further proceedings had therein, as follows:

R. L. CLIFTON, was thereupon recalled as a witness on behalf of the Plaintiff and in substance further testified as follows:

That a paper which is marked as Plaintiff's Exhibit No. 9, is thereupon identified as a representation of a cross-section of the Oklahoma City field, drawn to scale, upon which is shown the geological conditions therein, with certain important data in connection therewith; that said chart so identified differs from the chart previously identified as Plaintiff's Exhibit No. 8, in that it does not divide the Simpson formation into zones, and is drawn according to exact scale for the purpose of simplifying, very materially, the larger chart identified as Plaintiff's Exhibit No. 8; that said chart as so identified, was thereupon offered in evidence, to which the Defendants object, for the reason that the same is incompetent, irrelevant and immaterial, which objection was overruled;

That the witness was acquainted with the area known as the Greater Seminole area; that a paper which is marked as Plaintiff's Exhibit No. 10, is thereupon submitted to the witness, and identified as a representation of an east-west cross-section of the Seminole area indicating the geological conditions found in that great structural uplift; that said chart was prepared by the witness, from well logs and subsurface data obtained from time to time;

[fol. 419] That objection was made by Mr. German, of Counsel for the Defendants, to the introduction of this evidence, upon the ground that it is incompetent, irrelevant and immaterial, and does not involve any issue in the case; that inquiry was made by Judge Phillips as to whether

"a different Proration existed in the Seminole area as to the different sands";

and upon being advised that Proration was there different "in percentage," the objection was overruled, to which ruling the Defendants were granted an exception;

That said chart is drawn to exact scale, and indicates the structural conditions in the Seminole uplift, which in the main, account for the vast accumulation of oil in the producing beds in that area, and particularly in the Simpson formation; that the Seminole area is a structural uplift or plateau on the north extension of the Arbuckle Mountains, its anticlines in Ordovician formations having accordant summits, over the extent of the plateau, with evidences of local faulting;

Thereupon, the Plaintiff offers in evidence as part of the direct examination of this witness the chart which has been

identified as Plaintiff's Exhibit No. 10, without objection upon the part of the Defendants; that the witness was thereupon requested to point out any material geological differences in the Oklahoma City and Greater Seminole fields; that in response the witness stated that the Oklahoma City field is a faulted anticlinal ridge, while the Seminole area is a structural uplift on the north extension of the Arbuckle Mountains; that the Simpson formation is one and the same in both areas, with lithological modifications to this extent, that in the Oklahoma City field the Simpson formation is a series of sand, sandy shales, sandy green shales, with thin Dolomitic limes, while in the Seminole area the Simpson formation is composed of thin beds of lime, [fol. 420] sands, and sands interbedded with some shale, in a lesser percentage, however, than is found in the Oklahoma City area; the Oklahoma City area has the additional variation of carrying the Simpson formation in a greater thickness than is found at Seminole; that the number of oil producing zones in the Oklahoma City area is greater than in the Seminole area, resulting in the separation of the Oklahoma City field into well-defined zones of production, as hereinbefore set forth, which condition does not exist in the Seminole area; that the producing zones in the Seminole area overlie each other in a parallelism of zones or sands over the general uplift, whereas due to truncation and type of structure such condition does not exist at Oklahoma City; in the Seminole area when a well is drilled into a given sand there is a possibility of producing simultaneously from another sand, and the same could be true of the Oklahoma City field, but in the Seminole area it is possible to produce from all of the sands in any one area through one well, and this is not possible in the Oklahoma City field.

That there are but three producing zones in the Simpson formation in Seminole, that carry oil; (a) Upper Wilcox, (b) Lower Wilcox, and (c) Simpson Dolomitic Lime above the Upper Wilcox;

That the Wilcox sand is a zone of prolific production in Seminole, as well as in Oklahoma City; and while the lower Simpson formation occasionally carries a little oil in the Seminole area, it carries much oil in the Oklahoma City area; that the Seminole and Oklahoma City producing areas are approximately 65 miles apart, and that the area between the two fields is a sinclinal depression defined as an area

"in which the rocks are down-pressed so as to form a saucer-shaped basin" the sands of which are impregnated with brine;

That the Seminole field is not a single oil field, but a series of structural fields within which there are some eight ac- [fol. 421] cordant summits, each representing a separate oil pool; that a well drilled into any one of said eight pools will not drain any oil from any other of the eight pools, by reason of the fact that each summit is isolated by synclinal depression between it and the other similar structures; that these synclinal depressions are filled with water in the producing sand, and that wells drilled off structure therefore find water instead of oil; that water pressure and water saturation of the sands thus preclude any connection between the well-defined eight accordant production summits of the Greater Seminole area; that these geological conclusions are generally admitted to be very certain, so that a well drilled in the Oklahoma City field will not in anywise affect any of the producing areas in the Seminole field, and conversely a well drilled in any of the Seminole producing areas will not in anywise affect any of the Oklahoma City areas; that the witness thereupon indicated the location of the following major fields in the State of Oklahoma; The Deaner pool near Okmulgee, about 40 miles from Seminole and 90 miles from Oklahoma City; the Tonkawa, 70 miles from Oklahoma City; the Garber, 75 miles from Oklahoma City; the Burbank, 95 miles from Oklahoma City; all of which fields so identified have been prolific producers;

That the witness was then asked

"if there was any scientific reason that would warrant an allowable production from any one of these fields, as against another, in percentage, that would be marked in the difference between two and eighty";

to which the Defendants objected, for the reason that the question called for a conclusion of the witness upon a question of law; The objection was sustained over the exception of the Plaintiff;

A paper which was then marked as Plaintiff's Exhibit No. 11, was identified as a compilation of the potentials allowed and market demand assigned by the Corporation [fol. 422] Commission, and as such, determined to apply to (a) the Oklahoma City field, (b) the Greater Seminole area,

and (c) the balance of the State; that the compilation was prepared by the witness from data obtained from Corporation Commission Order No. 5413; that the Exhibit No. 11 was thereupon offered in evidence as a part of the direct testimony of the witness, and objection thereto was made by the Defendants, upon the ground of its competency, relevancy and materiality, which objection was overruled and exception thereto granted the Defendants, and thereupon Counsel reads the Exhibit into the record;

That the method of taking potentials in the Oklahoma City field is thereupon detailed by the witness, which procedure as detailed was substantially as set forth in the Orders of the Corporation Commission; that there is no rational basis for the formula adopted by the Commission predicated upon scientific knowledge or geological experience; that taking a potential with neighboring wells closed in—as is done—tends to give the well being tested, an exaggerated flow; that in the opinion of the witness, the actual potential of the Oklahoma City field, upon a five-day test, would not be more than 2,500,000 barrels, rather than 8,963,977 barrels, as shown by the Umpire's report of June 1, 1931; that the Bureau of Mines estimate of the potential of the United States (three months before) was about ten million barrels;

In response to questions propounded by Judge Phillips, the witness stated in substance:

The eight million odd barrels is the Umpire's actual gauge which is the four hour flow of the wells multiplied by [fol. 423] six; the Corporation Commission then divides this by three and the result is a little above the witness's figure of two million five hundred thousand barrels, but the witness regards his figure of two million five hundred thousand barrels as extremely high.

Mr. Glasser resumes the direct examination:

That by the Commission's Order No. 5437, of February 10th, 1931, the practice of arbitrarily dividing the potential carried upon the books of the Corporation Commission for the Oklahoma City field by the figure three (3), was inaugurated; the witness remembers the decision which was handed down on February 9, 1931, upon the second application for an interlocutory injunction in this cause; being

asked what is meant by gauging a well the witness stated that in petroleum engineering, and it is so considered in the oil industry, that after a well flows and maintains its flow it is gauged for an hour, or several hours, a day, or several days, and from that gauge a study of the number of barrels made daily is determined; gauges may be just at one time, for one hour, one day, a week or a month, and taking the sum total in each instance; that to gauge a well is meant a test that will determine what such well will make when flowing under normal conditions; that in the industry, a purchaser of oil producing property would require a gauge, for the purpose of obtaining the normal, reasonable and accurate flow of the well over a period of time of sufficient length to determine what the ultimate actual recovery of the well will be; that such purchaser would not be interested in knowing what a well that had been previously shut in for an indefinite time, would make in four hours, with all off-sets shut in; that such test would not be a reasonable gauge under any circumstances for any well; that in the industry when a gauge of a well is taken, using that term as employed in contracts of purchase, or engagements that have to do with oil properties, an actual test for thirty days is made and the gauge for the last day determines the pro- [fol. 424] duction of the well; that in the opinion of the witness the method employed by the Corporation Commission for the determination of the potentiality of wells in the Oklahoma City field does not reflect the normal reasonable production of the well so tested, at the end of the artificial method of calculation that is employed; the reason for this from a scientific standpoint is that the well that is on open or four-hour flow has been previously shut in for sixty-five days or for two days or one day and during that shut-in time underground pressure is built up so that when the well is opened up to flow its four-hour potential it makes in that four hours more than it will make in any other four hours during the next ensuing twenty-four period, which result is naturally due to the fact that it flows when the off-set wells are shut in and that the well being thus tested has been shut in for a day or more and the four-hour flow represents nothing but an unnatural and stilted potential of that well;

Examination by Judge Phillips:

By Phillips, J.:

"Q. If you were going to get what you conceive to be a proper basis you would have to run it four or five days?

A. At least that.

Q. You would have to run all wells at the same time?

A. Certainly.

Q. Well, if you have a situation where proration on approximately the basis of the present production was required, it would be impracticable to make an accurate test wouldn't it if you would run four or five days, you would run so much oil you would destroy your proration?

Mr. German: Haven't any tankage.

A. In a case like that if operators are not going to fortify themselves with adequate steel storage and other facilities for taking care of their properties, I don't know how we could provide for their helplessness.

Q. There isn't any practicable way if you are going to have proration to turn all wells loose for five days is there? [fol. 425] In other words, don't you have to come to some approximation or some estimate according to your figures? According to your estimate this is 19 per cent too high.

A. Yes, under my figures. I would like your Honors to keep this in mind that the Corporation Commission divides by three the four hour flow multiplied by six and allows 6.25% to conform to the market, which is like leaving the figures as they were and allowing 2.08%. The system is the same. It is merely a matter of computation, and not necessarily reducing the potential down to what it ought to be."

Mr. Glasser resumed the direct examination of the witness:

That all of this ramification of arbitrary figures, but reflects what has been previously and in some other place determined to be the market demand of that field; that the Indian Territory Illuminating Oil & Gas Company owns 65% of the total area of the Oklahoma City field, and 294 producing oil wells thereon (of a total of 744 oil wells in the field), of a total potential of 1,858,837 (of a total poten-

tial in the field of 8,963,977); that the allowable daily production for said Company may be obtained by multiplying its potential as herein given, by the percentage figures 2.08; or divide the potential as herein given by 3 and multiply the quotient by the percentage figures 6.25, obtaining in either event the identical result;

That the witness was familiar with the way potentials were taken in the Seminole area and in the early part of proration history in the Seminole area the potentials were taken by the employees of the company owning the well which was being so tested; that the offset owners might suit themselves about being present; that later the offset owners were notified to be present. After adoption of that rule, the owners prepared their potentials among themselves; that the Umpire could not send his personal representatives to all wells in the Seminole area and made no attempt to do that. He did the best he could, sending his representatives as often as possible and being present him-
[fol. 426] self in some cases so that the custom of the potentials being taken by the company men grew, one witnessing the potentials for the other, which practice is still in effect today; that the witness never knew of a potential being taken in Garber or Tonkawa, or in many parts of the Osage or down in the Okmulgee District; that the witness does not know of any proration at all in the Garber field, but was of the opinion that there is a Commission Order to the effect that such field should not be prorated;

That so long as the method employed in the taking of the potentials in the Oklahoma City field shall be utilized, the result thereof will be nothing but an arbitrary guess; that the witness does not know—and has never heard—of any method in the industry in which the actual production of the field can be determined so long as producing wells are closed in, or not allowed an unrestrained flow.

Cross-examination by Mr. German, of counsel for the defendants:

That by building storage and making other preparation at the proper time, the wells in the Oklahoma City field could now be produced on open flow upon full time without "flowing oil out on the ground and running it down the creek"; that it would not be necessary to build storage to take care of the first day's production, i. e., two, three or

four million barrels of oil; that the maximum of the entire field for the first day's production thereof, would be not more than 2,500,000 barrels; that the witness's estimate was based upon scientific methods of computation, with con- [fol. 427] sideration given to other factors, which include the past history of the field, the saturation and character of the sands, the methods under which the wells were produced, by which the flow from a high potential such as we are lead to believe exists in the Oklahoma City field, might be reduced to what I think it actually would be; that in the opinion of the witness there is no rational basis in the Commission's Orders for the division of its "exaggerated potentials" by the figure "3"; that such application of division by the figure "3" but creates another formula that results in the same end that was obtained in the use of the former formula; that the witness was thereupon asked,

"Q. Then why do you say the Commission's conclusion they should divide by three does not arrive at a fairly correct potential?

A. For this reason, the Corporation Commission for January figured the market outlet for the Oklahoma City field was 85,000 barrels. They figured if they computed on the basis of a potential of something like 5,000,000, they would have to use 2.08 per cent. They figured if they would divide that potential by three they would have to multiply that by 6.25, so the method is the same, whether they use 2.08 per cent. or 6.25 per cent. It is figured on the potential of the field.

Q. You have not answered my question.

A. I can't answer it the way you want it. I answered it my way.

Q. No, you said the Commission found the potential at about 2,500,000.

A. No, I didn't say that.

Q. That increased the percentage to 6.25 instead of 2.08?

A. They were going to allow the Oklahoma City field 85,000 barrels of oil and in order to arrive at what percentage of potential they would allow it, or use in the computation to arrive at what the field's outlet would be, they had two ways of doing that based on the same thing. One way was to divide the potential by three and multiply by 6.25 per cent. The other way was to leave the potential

like it actually was and multiply by 2.08, and both systems got the same result.

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[fol. 428] Q. Anyhow, the result they got was to arrive at a fairly correct potential, was it not?

A. They did not say so. The only reason they used potential at all was to see how they would dispose of 85,000 barrels, whether they would divide the potential by 6.25 or 2.08."

And again Counsel admonished the witness that he had not yet answered his question

"as to why the Commission's system is not practicable and rational, as nearly as your own?"

to which the witness replied that

"My system is based on what I consider scientific data and their system is based upon convenience in the disposition of 85,000 barrels of oil, whether it be done by the application of the percentage of 6.25 or 2.08";

That the actual potential of the Oklahoma City field, as calculated by the witness, would be from 2,000,000 to a maximum of 2,500,000 barrels per day, and that as calculated upon the formula employed by the Commission would indicate an actual potential of 2,600,000 barrels; whereupon, Judge Phillips interrupted to say that the potential as calculated by the formula would be 2,900,000, approximately 19% above the estimate of the actual, by the witness;

That the pools in the Greater Seminole area are separated as much as four miles apart; that in the Oklahoma City field approximately 40% of the wells penetrate more than one sand; that when more than one sand is penetrated and production simultaneously obtained therefrom, oil may go from a higher to lower producing area, if the rock pressure in the lower bed has been materially lessened, but that oil in the lower producing bed will not, under any circumstances, find its way into the upper; that there is normal rock pressure in all of the producing beds, which varies according to depth; that in a well 6500 feet in

depth, the rock pressure would be normal at 2400 pounds to the square inch; that if the pressure in one formation be higher than the pressure in the other, and the two for-
[fol. 429] mations be connected by several oil wells, the gas pressure from one area so penetrated will flow to the other; that when an oil and gas well is opened, it produces by reason of lowered pressure;

That whenever there is a released pressure at some point in the formation, the oil and gas does not tend to flow towards that place to equalize the pressure in the formation; it is universally conceded that oil and gas come out of a well because there is opportunity for pressure to escape; the witness accounts for the fact that some of the wells in the Oklahoma City field produce seventy-five to eighty thousand barrels of oil in the first few hours they are open, because immediately around the well-hole there is a release of pressure. That there is a hydrostatic force in the sand immediately around the well and the rate of movement into the hole is limited at first to a very narrow zone around the well and whether it produces a large amount of oil or gas, depends upon the porosity, the permeability and the amount of rock pressure; that the lessening of pressure gradually spreads back, and within certain limits the diminution in pressure rapidly spreads as oil and gas come out of the hole; that the Plaintiff does not have any wells in the Arbuckle lime in the Oklahoma City field.

Redirect examination:

That the method which the witness outlined in his direct testimony as to what, in his opinion, would be a better method of determining potentials in the Oklahoma City field, was merely his opinion and that the plan that he had suggested might be just as much out of line, as a matter of fact, as the plan that the Corporation Commission was using, unless, the wells be opened and an actual test be run; that one scientist always believes his formula to be better than that of another, but that in any event, "my own, or the Commission's, or any other person's" formula remains an arbitrary creation; that the witness's estimate
[fol. 430] of the total potentials in the Oklahoma City field being as much as 2,000,000 or 2,500,000 barrels per day, is

but the witness's estimate; that if the wells were all opened in that field for as much as fifteen days, the field might lack a lot of producing that much oil upon a given day; that it is impossible to gauge a well accurately so long as the offsets to that well are shut in; that none of the Champlin wells in the Oklahoma City area have been producing with physical waste; that said wells have been completed to production in the most approved fashion, in so far as the industry knows, and have been drilled in a workmanlike manner and so completed; that none of the Plaintiff's wells show "water" and that the Plaintiff has been careful not to drill any of said wells too "deep" using modern equipment and appliances to produce the wells in a manner that will not, and does not, create physical waste and that said wells will continue to be produced so that no physical waste will take place on any of the Plaintiff's properties; that in so far as the witness knows, every approved method of completing and producing wells in the Oklahoma City field has been employed by the Plaintiff; that the Plaintiff has had some fishing jobs on some of the wells, but that they were incident to the drilling of said wells.

Recross-examination:

That by physical waste is meant the running or spilling of oil on the ground, that is,

to waste it on the ground, * * * as a pipe line leak, to destroy a commodity, the utilization of which does not give the greatest efficiency in return to the owner of that property; * * *

that the plaintiff company

has not poured any oil on the ground, has not spilled any on the ground, or let it run down the creek, and that none of it has been put to any use that the Plaintiff Company does not believe to be beneficial.

[fol. 431] When asked if that is what the witness means by physical waste, he responded:

"That isn't all I mean—I mean that much at least."

That the figures 5,388,298 on Plaintiff's Exhibit No. 11, as the potential of the Oklahoma City field for January,

1931, were so carried upon the records of the Corporation Commission without the division by three, that being before the time when the Commission adopted the rule of dividing by 3; that while the Oklahoma City field potentials are now arbitrarily divided by 3, Seminole is not so divided, nor are any other parts of the state so divided; when they took a ten day open flow of the wells in part of the pools in the Seminole last Spring, they had adequate storage capacity to take care of the oil.

Redirect examination:

That if any oil, in saturation with mud, be blown into the air and deposited on the ground upon completion of the well, such loss of oil is not considered to be "waste" for such loss is incident to the completion of any well; that the witness meant to include what may be defined as premeditated waste; that thereupon Mr. Miley, of Counsel for the Defendants, stated that the Defendants did not claim that the Plaintiff "ran any oil on the ground."

Witness excused.

WIRT FRANKLIN, thereupon called as a witness in behalf of the Plaintiff, being first duly sworn, in substance testified as follows:

Direct Examination.

By Mr. Glasser, of counsel for plaintiff:

That he lives at Ardmore and Oklahoma City, is engaged in the oil business, operating principally as the Wirt Franklin Petroleum Corporation in the producing, refining and marketing branches of the business; has been for eighteen years so engaged in producing crude oil and for part of [fol. 432] that time, in refining and marketing the same; is associated with the Cromwell-Franklin Company and has an individual interest in some ninety wells in the Oklahome City field, upon which the total potential of the working interest (with which the witness is associated), is about 462,000 barrels per day; that Glenn Grimes, Geologist for the Wirt Franklin associated interests, with the assistance of a committee of Geologists, has prepared a map which

is a part of the witness's petition for a classification of producing zones in the Oklahoma City field, then pending before the Corporation Commission, which is marked as Plaintiff's Exhibit No. 12, and thereupon identified by the witness as a map "intended to outline the different producing zones in the Oklahoma City field"; that part in red, the producing area covered by the lime production; in blue, the lower Simpson sands below the Wilcox; and in yellow, the Wilcox sand proper; that the map was prepared by a committee of five Geologists, including Glenn Grimes for the witness's associated interests, Mr. Van Dall of the Sinclair Company, Mr. Clawson of the Indian Territory Illuminating Oil & Gas Company, Mr. Paschal of the Coline Company, and Mr. McGee of the Phillips Petroleum Company; that the white spots on the map indicate lime wells which have ceased to produce oil, have gone to water, have been plugged back and are now gas producing wells from upper sands in the Pennsylvania formation; that the committee of Geologists which prepared the map agreed that it accurately set forth the situation as then existed in said field; that Plaintiff thereupon offered in evidence the Exhibit so identified, as Plaintiff's Exhibit No. 12, as a part of the direct testimony of the witness, Wirt Frank, to which Exhibit the Defendants objected for the reason that the same is incompetent, irrelevant and immaterial, in so far as it may relate to any issue that may refer to a classification of the different producing areas in the Oklahoma [fol. 433] field as among those different areas, which objection was overruled; to which the Defendants were granted an exception; that the witness recalled having appeared before the Corporation Commission at its meeting of January 26, 1931, in support of his Petition for an increase of the allowable flow from the Oklahoma City field; the substance of which Petition, the witness remembered; that the witness was asked to briefly recount what occurred at said meeting at said time, to which the Defendant objected and the objection was sustained.

That Plaintiff thereupon sought to have admitted in evidence the transcript of the testimony of the witness given at hearing before the Corporation Commission on January 26, 1931, commencing on page 21 and including 35 thereof, together with comment of the Members of the Commission as the matter progressed; not, however, for the purpose

of showing that any Order of the Commission was not based upon evidence, but for the purpose of showing the then attitude of the witness toward Proration, which request was denied by the Court over the Plaintiff's objection;

That the witness is the same Wirt Franklin who filed the petition upon which the proration orders were made for more than a year, but ceased to be the principal petitioner in October, 1930; until that time the witness had prepared or had filed or there had been filed in witness's name all of the petitions upon which the state-wide proration orders had been made;

That thereupon the witness re-stated that the total potential for the working interest in the wells in the Oklahome City field in which he was associated in ownership, was 462,000 barrels per day, and that the allowable daily production therein was 9,240 barrels; that the associated ownership thereof has not been able at all times to find a market for that allowable daily production and had been underrun nearly all of the time; "However, we are nearly even right now;"

[fol. 434] That by "underrun" the witness means that the purchasers of oil have failed to take the production that was allowed to be produced under the orders; that at times the witness's companies had been underrun more than 500,000 barrels, notwithstanding strict compliance with all the rules and regulations incident to proration orders; that the witness was unable to say why his companies were so greatly underrun, except that "they just wouldn't take it," and that at the time the witness's associated companies were underrun 500,000 barrels the price of oil was $1.36 per barrel, and that at that time the pipe line companies cut the price 35¢ per barrel; that much discussion and argument was precipitated by the question following this statement, in which the witness was asked to identify the pipe lines which might have taken such oil; that objection to the question was sustained by Judge Cotteral, with the observation that "I don't think you can attack the orders of the Commission in this way"; to which ruling the Plaintiff was granted an exception; that the witness was thereupon asked if he could have disposed of his oil at that time, if he had been willing to take 60¢ per barrel for it, when the posted price was $1.00. Objection was renewed thereto and sustained, to which the Plaintiff was granted an exception;

That the witness was thereupon asked if he had been made an offer below the posted price and had refused to sell thereon, to which objection was renewed and again sustained over the exception of the Plaintiff; that thereupon the Plaintiff offered to prove by the witness that an offer had been made to the witness at a price less than the posted price and that the witness and his associated companies refused to dispose of any oil below the posted price and that the witness will testify, if permitted to do so, that he did not wish to break the market or sell any oil at a price below [fol. 435] the posted price, and maintained the posted price at a financial loss to his associated interests, to which offer Mr. Miley of Counsel for the Defendants, objected for the reason that the offer as made, is and was incompetent, irrelevant and immaterial. The objection so made, was by the Court sustained, to which ruling the Plaintiff was granted an exception.

No cross-examination.
Witness excused.

John H. Wiggins, thereupon called as a witness in behalf of the Plaintiff, being first duly sworn, in substance testified as follows:

Direct examination.

By Mr. Glasser, of counsel for plaintiff:

That he lives in Tulsa, Oklahoma, is a Petroleum Engineer, a graduate of Stanford University, 1911 and 1915, is acquainted with the business of steel tankage; that in the most approved type of tankage, it is possible to store oil with practically no loss in the so-called gas-tight tanks; that is, tanks which have roofs that are gas-tight and are properly equipped with vent valves to prevent air from flowing in and out of the tanks; that on 38 to 40 A. P. I. crude oil in Oklahoma, the loss for the first year measured by volume when stored in 80,000 barrel tanks, would be about 1%; that the witness has heretofore been connected with the United States Bureau of Mines in 1910 and assigned to the problem of determining evaporation loss in the Mid-continent Feld; that he prepared Bulletin No. 200 of the United

States Bureau of Mines, which related to losses under the conditions of storage at that time; that a year or so later, the United States Bureau of Mines published another technical paper No. 319, in which the witness outlined a method by which oil could be stored by modern equipment with [fol. 436] practically no loss; that at that time the method for practically no loss was not available; that during the past ten years, equipment and methods of storing crude oil have greatly improved; that at the present market the approximate cost of the best type of 80,000 barrel steel storage, completely constructed, is about 25¢ per barrel, which cost includes part of the cost of the grade and pipe, the cost of the land, and connecting the tanks with pipes; that such a tank so constructed, will be useful for twenty to thirty years; that the cost of oil storage now is much cheaper than it was in 1919; that the loss by volume in gas-tight 80,000 barrel steel tanks, with cone roof and air vapor space in the second year will be .8 of 1%, in the third year .7 of 1%, in the fourth year something less than in the previous year, being a gradually decreasing loss; that in five years the total loss would be practically between 3½% and 4% in that kind of tank, measured by volume.

Cross-examination.

By Mr. Miley, of counsel for defendants:

That the loss in 55,000 barrel tanks, which in 1919 was the standard size, as well as in 37,000 barrel tanks with so-called wooden roofs which were "air leaky," amounts to about 3½% the first year, with a decreasing amount in subsequent years; that the witness was fairly familiar with storage facilities in Oklahoma generally; that in the Oklahoma City field the loss by volume in 80,000 barrel modern steel tanks with cone roof, is 1% rough; that the witness knows of twenty-eight 80,000 barrel tanks of such type in the Oklahoma City field owned by the Sinclair Company; that when asked whether the other companies generally have storage in said field, the witness stated that to his certain knowledge there is not a very great amount; when asked whether the only oil that is stored in the Oklahoma City field is what is called "lease storage," the witness stated that he did not feel competent to testify as to storage in the Oklahoma City field outside of the tankage with which

[fol. 437] he was acquainted; that the estimate of 25¢ per barrel for cost of tankage would vary with the cost of land and that in a city such as Oklahoma City, where land is higher, prices might vary a few cents comparatively; that there is a small expense incident to storing oil in such tankage which will add something to the cost of the tankage; that after the oil is in storage, the principal cost of maintaining such storage would be fire insurance, interest on investment, with taxes, if any; that the insurance rate on the best type of storage is about 35¢ a hundred dollars worth a year, a comparatively low figure; that the type of storage tank that was in use in 1919 is now practically out of service; that the Prairie Oil & Gas Company is one of the largest storers of oil in the Mid-continent Field, and that that Company has comparatively recently changed a great proportion of its storage to the gas-tight type; that the estimate of the witness of the loss in storage of 1%, was partly the result of an investigation that he had made for the Prairie Company in 1919 when he investigated "a lot of their tanks";

That there is a very small deterioration in quality of crude oil in storage, but that such deterioration is due to the loss of gasoline content which extends so long as such crude oil remains in storage; that incident thereto is the intrinsic value of such loss; that the witness is interested in the type of roof concerning which he has testified, having been the inventor thereof and realizing a royalty from the use of the same; that the patent is owned by the Continental Bridge & Iron Works of Chicago; that if a storage tank about which the witness has been testifying remains in one place, it will usefully serve for twenty to thirty years, but that if after two or three years the oil is sold and moved out of the tank, the tank has comparatively little salvage value; that to be used somewhere else the [fol. 438] tank would have to be torn down and moved and that would consume practically all of its value.

Redirect examination:

That the witness has personal knowledge that there is something over 500,000,000 barrels of oil in storage in the United States scattered in most of the oil-producing states and at refineries; the principal storers in California are the Standard of California, the Shell Corporation and the

Union Oil Company; in the Mid-Continent the principal storers are the Humble Oil & Refining Company, the Prairie Oil & Gas Company, the Standard of Indiana, and the witness does not know how much the Sinclair has, although it has a good deal, nor does the witness know how much the Shell Petroleum Corporation has; the witness does not know as to the principal storers in the eastern part of the United States; that the cost of construction of said 80,000 barrel steel tank of the type about which the witness testified would be, the tank itself about $20,000.00, and the other cost would be added to that; that such cost is the first cost and is not the cost every time the tank is filled.

Witness excused.

That thereafter ERNEST J. SLATER, *is* recalled by the Plaintiff, further testified upon redirect examination in substance as follows:

Redirect examination.

By Mr. Glasser, of counsel for plaintiff:

That the Champlin Refining Company uses gas-tight, steel storage tanks (for crude oil) at its Enid refinery, of 55,000 and 80,000 barrels capacity, with a total storage capacity of 645,000 barrels;

That the evaporation, measured by volume, from such [fol. 439] type of storage tank will not exceed 1% per year;

That on June 24th, 1931, the Plaintiff had in such storage 52,393 barrels of gasoline, and 75,984 barrels of crude oil; that the refinery was upon that date processing 16,000 barrels of crude oil, and shipping fifty cars of finished product per day; each such car containing approximately 190 barrels of such refined product; that such day's total shipment was the equivalent of about 10,000 barrels of gasoline per day;

That thereupon Judge Phillips addressed certain questions to the witness, which were in their respective order, answered as follows:

By Phillips, J.:

"Q. What percentage of deterioration is there in the oil from storage?

A. In volume you mean?

Q. Well, as I understand it, if you store oil the lighter vapors are the ones that you lose?

A. Yes, sir.

Q. And that means you lose some gasoline content?

A. Yes, sir.

Q. What percentage of loss is there in gasoline content?

A. Well, in these steel gas-tight storage tanks there is never over one per cent lost.

Q. That is by volume?

A. Yes, sir.

Q. If you refine that oil immediately you can recover a little more than if you let it stand for a year and then refine it?

A. It would be very small.

Q. Negligible loss?

A. Yes, sir";

That 109 types of product are manufactured at Plaintiff's refinery; a list thereof by trade name being identified as Plaintiff's Exhibit No. 13, offered as a part of this [fol. 440] witness's direct testimony, and admitted over the objection of Defendants;

That the Plaintiff's refinery was then processing 14,000 barrels of crude oil per day, approximately 85% of its capacity; that Plaintiff's gasoline storage was decreasing at the rate of 2,000 barrels per day; that on that day (June 29, 1931), the Plaintiff had on hand in all of its storage tanks 44,300 barrels of gasoline, and that if the same ratio of decrease continues into that storage, it will be exhausted in 22 days' time.

No recross-examination.

Witness excused.

H. M. STALCUP, thereupon called as a witness on behalf of the Plaintiff, being first duly sworn, in substance testified as follows:

Direct examination.

By Mr. Glasser, of counsel for plaintiff:

That he lives in Tulsa, Oklahoma, is engaged in the oil business with the Skelly Oil Company in the capacity of

Vice-President in charge of Production; and has been so employed for five years and two months; and has been more than fourteen years in the oil business; that he has had occasion to consider the ratio in which oil and gas are being produced in the Oklahoma City field, as a result of the effort to operate efficiently the Skelly properties in that field;

That by gas-oil ratio is meant the volume of gas produced by a given well measured in the ratio of cubic feet of gas utilized to produce a barrel of oil; that in the Wilcox sand the ratio should be not less than 700 nor more than 2,000 cubic feet to the barrel of oil, 700 being the minimum and 2,000 the maximum for ideal production;

That the least gas-oil ratio in the Oklahoma City field of which the witness has heard, was a matter of 300 or 400 [fol. 441] cubic feet to the barrel of oil, as against a high of several hundred thousand feet; that a ratio of several hundred thousand cubic feet of gas to a barrel of oil could most likely be brought about by structural conditions of the producing formation, or improper completion of the well in setting the casing too high, or landing the flow-string in a position in the producing horizon too far above the saturated oil sand, which would allow a great amount of free, dry gas from either a separate sand or a portion of the oil sand, to needlessly enter the flow-string; that in the opinion of the witness, this is cause for the excessive gas-oil ratio that exists in some of the wells in the Oklahoma City field; that such situation can be remedied by following a directly opposite course, that is, landing the flow-string where it should be landed at the top of the oil saturated portion of the horizon, and in some instances the running of a smaller size tubing would partially remedy the effect; but such reconditioning will not help an extreme case of several hundred thousand cubic feet per barrel;

That the Skelly Oil Company has produced one of the largest wells in the Oklahoma City field upon a gas-oil ratio of approximately 500 cubic feet of gas to the barrel of oil; that such result was accomplished by carefully coring at the top of the horizon in which it expected to produce oil, analyzing the sand samples, attempting to set its pipe at a point or level which would be proper to produce all of the oil capable of being produced by the well, with a minimum of gas, and by casing off the "gassy" formations; that the well referred to was the John Herd Well No. 1; that the

gas flow of that well increased to sixty million cubic feet, and nevertheless there was maintained a gas-oil ratio therein of not to exceed 900 cubic feet of gas in the production of a barrel of oil; so that in an identical case a well of that tremendous capacity, if properly handled and the procedure be followed which has been here outlined, a proper [fol. 442] gas-oil ratio of not to exceed 900 or 1,000 cubic feet per barrel can be maintained;

That in the opinion of the witness, 2,000 cubic feet per barrel would be a proper gas-oil ratio for wells in the Wilcox sand at Oklahoma City, but that there are wells in that field which could not be brought to any such gas-oil ratio, regardless of where the casing might be set; that the so-called Johnson sand would probably be the most difficult in which to establish a proper gas-oil ratio, being more prolific in gas proportion than are the other producing areas.

Cross-examination.

By Mr. German, of counsel for defendants:

That the Corporation Commission has never fixed any gas-oil ratio for the Oklahoma City field; that there is a tremendous advantage in having a proper gas-oil ratio in that the gas in all oil-producing formation, particularly that gas that is dissolved in the oil, is of much importance and value to the oil producers, primarily because of the inherent pressure of the gas within itself dissolved in the oil as an agency to move the oil horizontally through the oil-producing formation to the well-bore; and of lesser importance, as an element of efficiency or agency in producing oil which would otherwise have to be produced artificially, that is, by gas-lift, by lifting the oil or blowing it to the surface; but of the two, the much more important is the conservation of the gas in the formation as the motive element to move the oil through the formation to the well-bore.

Redirect examination:

That gas-oil ratio is important regardless of how the well is operated and becomes of more importance in that by holding the gas back you thereby conserve the energy of the gas and take full advantage of its use; that low gas-oil ratio is one of the most important things in producing oil regard-

less of whether you are producing under proration or otherwise;

[fol. 443] That Mr. German appearing as Counsel for the Defendants, is the General Attorney of the Company of which the witness is Vice-President.

Recross-examination:

That the Skelly Oil Company has twenty wells in the Oklahoma City field, some in the Wilcox, some in the Kinter, some in the School Land; and some in combinations of two of said sands.

Witness excused.

Ray M. Collins, thereupon called as a witness in behalf of the Plaintiff, being first duly sworn, in substance testified as follows:

Direct examination.

By Mr. Glasser, of counsel for plaintiff:

That he has lived in Tulsa, Oklahoma, since 1907, and that prior to his appointment as Umpire had been a contractor and oil producer, President of the Echo Oil Company, and interested in the Cortez and other companies; was first appointed Umpire in October, 1926, being first approached in that connection by E. B. Reeser and Dan Kelsey; attended a meeting of the producers of the Greater Seminole area in connection therewith in the Mid-continent Oil & Gas Association headquarters at Tulsa, and when asked as to who was present the first time they ever talked with you about acting as Umpire, objection was made by Mr. German of Counsel for the Defendants, as incompetent, irrelevant and immaterial; that thereupon the following discussion was had:

"Cotteral, J.: I don't know what the object of the question is.

Mr. Glasser: We are going to try to show the background * * * that operates * * * proration outside the Corporation Commission.

Cotteral, J.: Why don't you ask it directly?

Mr. Glasser: I couldn't ask the question in that fashion. I started to develop the subject as best I can.

[fol. 444] Cotteral, J.: Overruled.

Mr. German: Exception.

Cotteral, J.: I suppose the point you are making is that he represents some oil companies and is appointed by the Commission. Is that it?

Mr. Glasser: It is a little more broad than that.

Cotteral, J.: There is no dispute about it is there?

Mr. German: Not at all. In 1926 there was proration by agreement in the Seminole field; in 1927 proration by orders of the Corporation Commission, and it has been that way ever since except for some small intervening periods, and beginning in 1927 he was appointed by the Corporation Commission as Umpire.

Mr. Glasser: Is counsel testifying?

Cotteral, J.: He is making an admission.

Mr. McKeever: There is a purpose in making that admission. * * * We would like to develop just exactly what happened."

That the witness was employed as Umpire at a salary of $24,000.00 per year, and was allowed in addition thereto the witness' expense account and the expenses of those who work under the direction of the Umpire's office; that until February, 1927, that expense account was filed with the Barnsdall Oil Company; that in December, 1926, pipe lines were completed into the Seminole field, and the demand and supply were practically equal and the witness withdrew as Umpire; that in February, 1927, was asked by a committee representing the Seminole operators, of which Howard Cole was chairman, to go over the field and make a survey and to make recommendations, in which engagement the witness drew a salary for about 30 to 45 days and made recommendations which were turned down; and if the witness is not mistaken, was paid for the service by the Pure Oil Company, which was reimbursed by the other operators, "the same as the Barnsdall Company did in 1926"; that the Pure [fol. 445] Oil Company is one of the largest oil-producing and refining companies in the United States, a very substantial company; that Howard Cole is connected with that company;

That in response to inquiry concerning the membership of the committee of which Howard Cole was chairman, the witness made the following respective answers:

"Q. You are not now able to remember who the other gentlemen of the Committee were?

A. Mr. George Moody of the Mid-continent. Mr. Bob McArthur of the Barnsdall, and I believe Mr. Connery of the Carter, I think Mr. Pringle of the Tide-Water, I am not sure. We had so many committees down there the last four years I can't remember.

Q. Mr. Moody representing the Mid-continent Company, were they substantial producers in the Seminole area?

A. Yes, sir.

Q. Do you know whether they have any acreage in the Oklahoma City field or not?

A. They have not.

Q. Mr. McArthur of the Barnsdall Company. They are substantial producers in the Seminole, are they?

A. Yes, sir.

Q. Do they have any acreage in the Oklahoma City field?

A. They have not.

Q. The Carter Oil Company is a very substantial concern?

A. Yes, sir.

Q. Subsidiary of the Standard of New Jersey?

A. Correct.

Q. And they have production in Seminole?

A. Yes.

Q. Do they have any in Oklahoma City?

A. Not that I know of.

Q. The Tide-Water is another very substantial company [fol. 446] is it not?

A. Yes, sir.

Q. In New Jersey at Bayonne?

A. Yes, sir.

Q. Do they have any production in the Oklahoma City field?

A. Not that I know of.

Q. So that not a single member of that committee represented any ownership that is now in the Oklahoma City field. Is that correct?

A. That is correct.

Mr. German: The Oklahoma City field wasn't in at that time. It hadn't been opened up; had not been discovered.

Mr. Glasser: Perhaps you didn't get the import of the question. Let me repeat it.

Mr. German: I don't object to counsel developing this evidence as far as the court is concerned, but it is absolutely a waste of time in my judgment. It is immaterial how they established this proration back there, whether it was a voluntary agreement prior to the time the Corporation Commission began to enforce it in this state in November, 1927, or October, whatever the time was. It is immaterial to any issue in this case."

That the committee referred to has not functioned for possibly three years, and when in existence, operated under the name of the Seminole Proration Committee; that whatever the committee did was by agreement; that in the best recollection of the witness, the operators in the Seminole field first appealed to the Corporation Commission about the first of August, 1927; that the committee then was composed of Mr. McArthur, who has always functioned, Mr. Connery of the Carter, Mr. Nicholas, at that time of the Texas Company, and Mr. Pringle of the Tidewater, and that the other member, in the best recollection of the witness, was Mr. Cole of the Pure Oil Company, so that the only change in the committee in the meantime, was in the membership of Mr. Nicholas of the Texas Company; that there had not been any development in the Oklahoma City field [fol. 447] at the time the committee first went to the Corporation Commission; that when the committee went to the Corporation Commission it petitioned that the Seminole pool be prorated to the outlet; when asked whether the Committee then organized into a permanent organization the witness stated that the producers in each one of the areas such as the Bow Legs Pool, which is one pool, and then the Earlsboro pool, and the Seminole pool, appointed what was considered as an Operators' Committee who were to work with the Umpire and to help out in every case; that the witness was at the time named as Umpire "by this Committee"; the functions and duties of the several operators' committees were limited to the pools which they respectively represented and for which they were appointed by the operators; no other part of the state was at that time involved in that arrangement;

That the witness was requested to advise the court of the percentage of the Seminole area owned by the companies represented by membership on the committee referred to, and stated that he had a list showing companies not owning pipe lines or refineries and having no outlet for their production except through the pipe lines belonging to other companies, a second list showing the companies having pipe lines and refineries sufficient to handle their own production, and a third list showing companies having production, pipe lines and refineries, but production so located that they have to depend to a certain extent on other lines to handle their oil; that the lists so produced by the witness were marked as Plaintiff's Exhibit No. 14, and having been so identified, were without objection offered in evidence as part of the witness's testimony on direct examination.

That the lists so furnished were accurate and prepared under the supervision of the witness; that while the duties of the Umpire extend over the Oklahoma City pool, [fol. 448] it has been handled by Otto Bradford, who reported to the Corporation Commission; that the witness has more or less accurate general information with reference to the Oklahoma City field; that each pool has a committee of its own, a list of these committees to be found in the Orders of the Corporation Commission; that there is a general committee that supervises the whole arrangement so far as the Mid-Continent Oil and Gas Association is concerned, called an Advisory Committee; that Mr. Sidwell of the Prairie Oil & Gas Company, Mr. Filley of the Texas Company, Mr. Nicholas of the Continental Oil Company of Ponca City, Oklahoma, Mr. Blue of the Indian Territory Illuminating Oil & Gas Company, Mr. Fell representing the operators in southern Oklahoma, Mr. Young of the Carter Oil Company, and Mr. Richards of the Pure Oil Company, the Chairman of the committee, constitute the membership of the committee referred to; that this Committee functions as a fact-finding and advisory committee, finding the facts showing the potential production and the demand for crude oil in the State of Oklahoma, and these findings are presented to the Committee and they make recommendations to the operators in the pools, "over in the Seminole or other parts of the state"; that

the Committee gets most of its information upon which it makes its recommendations from the witness and Mr. Mapes, who is the statistician for the Mid-Continent Oil & Gas Association;

That the Prairie Oil & Gas Company's production in the Oklahoma City field is rather small; that the Texas Company does not have any production in the Oklahoma City field; and that the Continental Oil Company has production in the Oklahoma City field;

That at this juncture the witness recalled that Mr. Davis of the Phillips Petroleum Company of Bartlesville, was also a member of the Advisory Committee; that the Indian Territory Illuminating Oil & Gas Company is the principal owner in the Oklahoma City field in area and in number of wells;

[fol. 449] That the witness did not know how these gentlemen made their presence and membership on the Committee known; and is not familiar with how they receive their appointments; that while he worked with the Committee, he had been employed, quite a long while ago, by Mr. Reeser of the Barnsdall Oil Company, although Mr. Reeser was not a member of the Committee; that "the Seminole producers asked Mr. Reeser to get in touch with me and see if I would get in touch with the producers in Seminole"; that when the witness's services were employed for use by the Corporation Commission, the last time he believes, he was again approached by Mr. Reeser; that the witness has been paid since August 5, 1927, by the Carter Oil Company, and has never received any compensation from the State of Oklahoma; that Mr. Young, a member of the Advisory Committee, is President of the Carter Oil Company, which does not have any producing property in the Oklahoma City field; that the Carter Oil Company does not have a pipe line into the Oklahoma City field, but the Oklahoma Pipe Line Company does have; the Oklahoma Pipe Line Company is not under the control of the Carter Oil Company, but the Standard Oil Company of New Jersey owns and controls both the Carter Oil Company and the Oklahoma Pipe Line Company;

That since August 5, 1927, the witness has filed his expense account with the Carter Oil Company and every check he has received since then was issued by that Com-

pany; the witness stopped as Umpire on three different occasions during that time, but went back each time, and he thinks Mr. Sidwell asked him the last time to resume so acting, and it was either Mr. Reeser or Mr. Cole who did so on the other two occasions;

That the Corporation Commission has never issued to the witness any kind of certificate or paper evidencing his appointment as Umpire; that the Order of the Corporation Commission designating the witness as Umpire was upon [fol. 450] the approval of the former Governor of the State of Oklahoma, which has not been confirmed by the present Governor;

That the witness never applied to be appointed Umpire but believes the application for his appointment was in the petition to the Corporation Commission;

That on September 29, 1929, "the last time we started proration in the Greater Seminole, also Oklahoma City", * * * Mr. Reeser made the application to the Commission also requesting me to act as Umpire for the State";

That the witness has never taken an oath of office to act as the official Umpire of the Corporation Commission, as evidenced by the following question by Judge Kennamer, with the answer of the witness thereto:

By Kennamer, J.:

"Q. Have you ever gone before the Corporation Commission or any officer authorized to administer oaths and taken an oath of office as an officer of the state to act as official umpire of the Corporation Commission? You ought to know whether you have done that or not?

A. No, sir, I have not."

That proration was put into effect in the Oklahoma City field on the 28th day of October, 1929; that the Barnsdall Company of which Mr. Reeser is President, does not own any acreage in the Oklahoma City field;

That Otto Bradford was first appointed Umpire of the Oklahoma City pool by the operators in that pool and then at the time the operators of that pool requested that the pool be put on proration, Mr. Bradford was appointed by the Corporation Commission, and the witness made the recommendation at that time, that he be placed in charge

of the field; that Bradford had been engaged in the leasing business prior to that time and lived at Ardmore;

That the operators in the Oklahoma City field to whom the witness refers were the operators who at that time had production in said field, among them being Indian Terri- [fol. 451] tory Illuminating Oil Company, Wirt Franklin, the Sinclair Oil & Gas Company, the Coline Oil Company, T. B. Slick, and Mr. Maybe, an independent operator; those operators suggested Mr. Bradford's name to the witness; he was working for them as Umpire or Referee at the time proration was put in effect in that field; the witness does not know what salary Bradford gets; that the witness had a complete list for the year 1930, of the contributors to the fund which the Carter Oil Company disburses on the Umpire's expense account and salary, of the Umpire, Ray Collins, and the witness produces a paper which is marked as Plaintiff's Exhibit No. 15, and offered in evidence as a part of the direct testimony of this witness without objection; that the Exhibit shows the gross number of barrels of oil produced from November 1, 1929, to January 1, 1931, in the Greater Seminole area, with the average percentage of the total amount produced in the prorated area and the third column sets forth the amount paid by each company; that the producers paid the salary and expenses of the witness based on their part of the oil produced in the Greater Seminole area; the total expense for the period mentioned was $95,181.39; that the same information for the period of time from January 1, 1931, until June 1, 1931, would be available from Mr. Chesebro's books; that the contributors to this fund are limited to the Greater Seminole area, in other words, the entire cost of the proration program over the State (outside of the Oklahoma City area) is charged against the operators in the Seminole field alone;

That Otto Bradford's expenses and salary are paid by producers in the Oklahoma City field, and the witness believes that the Oklahoma City Operators' Committee has supervision of the disbursement of the money raised to pay said expenses and salary; the witness's salary is a state-wide salary, the entire proration of the Class-A wells, which takes in the wells in the state having a margin of twenty barrels (that is, the wells outside of the Seminole [fol. 452] area and the Oklahoma City field), amounts to

about 12,000 barrels, and it would be pretty nearly impossible to divide that among 200 or 300 operators, so that the total expense outside of Oklahoma City is paid by the Seminole operators, and Oklahoma City pays Bradford;

That actual gauges under the Proration Orders were first taken in the East Earlsboro, a flush pool in the Seminole area, commencing on the 29th of September, 1929; and taken every seven days thereafter, during the month of October; that the witness was personally present at the taking of a great many of such gauges, but that a majority were witnessed by representatives of other lease owners in that field;

That in October of 1929, a new Order was issued, which started prorating the entire Greater Seminole area, of which East Earlsboro forms a part; that in 1929 the producers in that field gave the witness their pipe line runs and their production figures for the month of September; that the witness thereupon had the daily average of the actual production taken for that month to arrive at the potential for each lease, and from the first of November, 1929, until April, 1930, declined each lease 3% per month; that the potential of such lease was arrived at by such decline method; that the decline method was so employed after consultation with the Engineers of the various companies interested; that the Umpire's office also had decline curves on that field since 1927, the source thereof not being indicated by the witness; that the 3% decline so applied

"was upon the best information available and it saved opening up the wells and taking new gauges and giving everyone the opportunity of believing that the other man was cheating";

That in April, 1930, a 15-day open flow gauge was taken in the Greater Seminole area, to check up on the decline [fol. 453] curves; that the 3% applied in the decline curves, was within the information the Engineers gave and the past history of the field; that the open flow production for the 15-day gauge showed a slight increase over the decline curve figures, and that thereafter, until March, 1931, the potentials were carried as shown by the 15-day open flow gauge; that in the taking of the 15-day gauge referred to, the wells were allowed to produce for 15 days at open flow capacity, day and night, and a gauge was then taken;

and on March 15, 1931, a 10-day gauge on all of the pools in the Seminole area, with the exception of the ones that were flush, was again taken to check the potential for the purpose of de ermining whether such decline curves were satisfactory, and it showed an

"increase of about 7000 barrels over what we were carrying it previous to the gauge. Since that date we have been using the 3% decline curve on leases in Class-B of the Greater Seminole area";

That other actual gauges were taken in the Chandler pool, and in the Wewoka Townsite pool; that in Class-A wells, as defined in the Corporation Commission's Orders, the actual production records for the months of July and August of 1930, were used as a potential, and have been declined 1½% a month since, that being about the rate of decline of the old fields;

That the Garber field was declared exempt from proration by the Corporation Commission after conducting a hearing on the application of the producers therein and the Garber Refining Company, on the ground that the Garber Refining Company was the only one serving the field, and that it had a demand for the entire production therein, and would take it ratably; that gauges have not been taken in the Burbank pool (some 75 miles or more north of Seminole area); and in Tatums the potential of such wells as are brought in, are taken when completed, that this is a small field in the southern part of the State, producing about 6,000 barrels per day, with a potential of between 40,000 and 45,000 barrels per day; that the old original Tatums pool is not making [fol. 454] an average of 20 barrels per well;

That proration is conducted in the interest of the producers and the Corporation Commission, and the witness supposed the public's interest therein was "in the way of conservation";

That the witness remembered this question having been propounded to him when testifying before the Corporation Commission, and that he there said that

"he was not interested, as far as the public was concerned";

That the witness now states that his meaning in the answer which he gave before the Corporation Commission, was that he

"was not interested as far as the public was concerned, when it came to the mechanics of proration";

that Judge Phillips requested the witness to

"make a list, and furnish it in the morning, of the fields in which there is no proration, and the amount of oil those fields produce";

that the witness stated that he would not "be able to get that unless I went to the office," and thereupon Judge Phillips advised the witness to "telephone to the office and have it sent up," and the witness was then requested by Counsel to have the fields "indicated if you can";

That under the practice employed in the Seminole area operators are notified of the day on which the potentials are to be taken; these notices go out to all the operators in the entire pool giving the date the potentials are to be taken and how they are to be taken; the pools are classified, and [fol. 455] whether all of the operators in the entire Seminole area are notified or merely the operators in a particular pool therein, depends on conditions; that there are very few operators in the Wewoka town-site pool and they are notified individually and as a pool, but the operators in the other pools (of the Greater Seminole area) are not notified that a gauge is to be taken in the Wewoka town-site pool, and in the case of wells in the Class-B pools in the Greater Seminole area, all the operators in said pools are notified that a decline curve will be used for the month of June; that they are also notified by letter at the same time that the Konawa pool will take a 5% decline for the month of June; the witness states that he has already gone over the fact that an actual gauge was taken for 30 days in September and then states that the gauge that was taken at that time had been used as the basis for the decline curve since then, and that notice was given to the operators that said curve would be continued and extended unless there was some reason to do otherwise; that an actual physical gauge is taken twice each year and the last one was taken in March, 1931; that the operators in the Oklahoma City field are not given any notice of the taking of any gauge in the Greater Seminole area, and conversely, operators in the Seminole area are not given any notice of the taking of any potential in the Oklahoma City field; that the witness does not assign

market demand to the respective fields but makes the recommendation upon which the Corporation Commission assigns the market demand; that he obtains the information which he passes on to the Commission from the marketers who buy oil from those districts; said information does not come from the Advisory Committee; Mr. Mapes and the witness get it from the different purchasing companies and different refiners; that at the last meeting of the Seminole operators in April, 1931, the purchasing companies in the [fol. 456] Seminole area were asked to and did make their nominations as to the amount they would take out of those fields; that some of that information comes from the Prairie Oil & Gas Company, with which Mr. Sidwell is connected; that at the April meeting of the Seminole operators, the witness did get information from Mr. Sidwell personally; that some of said information came from the Oklahoma Pipe Line Company, as evidenced by the following:

"Q. Did you get some of it from Mr. Young of the Carter Company?

A. I believe that came from the pipe line company.

Q. Well, who is at the head of the pipe line company?

A. Tom Moroney, I believe represented them.";

and that some of said information came from The Texas Company through one Mr. McGoltrich, so that the recommendation which the witness takes to the Corporation Commission for the assignment of so-called market demand over the State, is predicated upon data and information which is obtained from these men at the heads of these pipe line companies; that since January 1st, 1931, all of the purchasing companies in the State are subpœnaed by the Corporation Commission to appear before the Corporation Commission and the nominations are there made directly to the Corporation Commission; that the witness made the recommendation upon which market demand in the Seminole area and the balance of the State other than the Oklahoma City pool, was assigned for the month of January, 1931;

That when the witness's attention was directed to Plaintiff's Exhibit No. 11 (being a compilation of potentials under Corporation Commission Order No. 5413, as of January, 1931), he stated that Seminole and the balance of the State were correct as there indicated, because they are

practically actual production, while the potential figures for the Oklahoma City field is "just an exaggeration"; that the witness stated that Plaintiff's percentage upon Exhibit [fol. 457] No. 11 was not correct; that he made the recommendation for the assignment of Seminole's allowable production and the balance of the State as shown by the Exhibit; that the witness figured the balance of the State at actual production and not upon an estimate and that the Greater Seminole allowable was actual production and that if an actual gauge could be taken of the Oklahoma City field in the same manner as taken in Seminole the potential would show about 600,000 barrels; thereupon, the witness stated:

"Therefore, instead of having only 1.58%, you will find that you are having your share of the outlet of the state";

that the potential of the Oklahoma City field is nothing more

"than a measuring stick to allow each producer his ratable taking out of the field";

that if the Oklahoma City field were to be put upon its maximum open flow that at the end of thirty days it would undoubtedly do around 600,000 barrels; that

"based upon estimates of Champlin's and other geologists",

in the opinion of the witness, the Oklahoma City pool would not ultimately produce more than 250,000,000 barrels, of which 60,000,000 have been recovered, leaving 190,000,000 to be produced, and "it is considered" that if the field were to be opened wide, it would produce 50% of this amount the first year, so that if you would apply that curve backwards it would show that the total production for the first thirty days would average about 1,000,000 barrels per day, and for an entire year would average about 287,000 barrels per day; that such calculations are estimates upon the part of the witness, based upon conclusions of Geologists; that if the Oklahoma City field be allowed to produce upon its maximum open flow for thirty days, that it would then make about 645,000 barrels per day as against approximately 800,000 in the balance of the State;

That when asked as to whether the uniform application of the law would require that the percentage allowed in the Oklahoma City field should be therefore raised to a point [fol. 458] where it would give the Oklahoma City field its share of the oil (production) as against that same figure in the balance of the State, the witness replied "no, sir"; and that the application of a percentage which returns a greater "proportion" of production of oil to Seminole and the balance of the State, than to Oklahoma City, is not an arbitrary discrimination against the Oklahoma City field, for the reason, in the opinion of the witness, that, regardless of what the Oklahoma City field might actually do, it should never be opened up to more than 250,000 barrels a day if you are going to have your greatest recovery; that the witness was thereupon asked if the application of a percentage that returned to Oklahoma City a lesser volume of oil against its possible actual production than is allowed in actual production to other parts of the State, constituted a discrimination against the Oklahoma City field, to which Mr. German, of Counsel for the Defendants, objected as argumentative, followed by the statement that

"Counsel well knows the allowables for all these fields are predicated upon a market demand for oil from those fields. This question is argumentative."

Cotteral, J.: The question covers too many phases, and calls for an opinion of the witness without a full statement of all the facts.

Phillips, J.: And involves the word "discriminatory".

Cotteral, J.: Objection sustained";

That when the witness was asked if the principal purchasing agents of the Seminole and Oklahoma City fields were represented on the Advisory Committee, replied that "You have the list there". Inquiry was then made as to the following situations: The Oklahoma Pipe Line Company, a Standard of New Jersey subsidiary, a purchaser in both fields; The Indian Territory Illuminating Oil & Gas Company, producing oil in both fields; The Texas Company, [fol. 459] which "buys oil in both fields but have only one pipe line into the Seminole";

The Prairie Oil & Gas Company buying in both fields, when buying; The Phillips Petroleum Corporation pro-

ducing in both fields; resulting in the conclusion that the companies represented through executive officers as members of the Advisory Committee, are either buying in, producing crude oil, or own pipe lines into both fields; that in considering the market demand, the witness takes into consideration the railroad transportation facilities as far as he can in the respective fields; that in this connection, the Oklahoma City field is handled entirely by the Corporation Commission.

Cross-examination.

By Mr. German, of counsel for defendants:

That the Indian Territory Illuminating Oil & Gas Company has production in Seminole and Oklahoma City areas with the largest production potentially in the Oklahoma City field; that the Phillips Petroleum Company likewise has its largest potential production in the Oklahoma City pool; that prior to the time when the Corporation Commission in the early part of 1931 began to call in by subpœna the purchasers of crude oil, the witness and Mr. Mapes

"ascertained how much the different buyers would take from different pools, and after about the first of 1931, the Commission itself has been having the purchasing concerns testify before it as to the amount they expected to take during the next month, or quarter, as the case might be";

that in the event of changes in the current or market demand during any given month or quarter, such change was taken care of by the orders of the Corporation Commission; that the witness has never fixed the amount of oil to be allowed to be produced in any field, and that when fixed by the Corporation Commission was predicated upon the demand as ascertained; that the witness has made an effort to obtain a larger amount of current outlet for the Oklahoma City field than it has had from time to time and that others have done likewise; that the State-wide Proration Committee has attempted from time to time to induce the [fol. 460] purchasing companies to buy more crude oil from the Oklahoma City field, and that they did give their promise that they would do so; that when the witness referred to the so-called Advisory Committee, he was re-

ferring to the State-wide Proration Committee; that he was not sure as to whether he had given a correct list of the names of the Committee, but was sure that Alvin Richards is the Chairman; that the Stanolind Company is the largest purchaser of crude oil in Oklahoma, but does not have a representative on the Advisory Committee; that the members of that Committee are "oil producers personally, or affiliated with companies that are oil producers", rather than in the sense of the members being oil producers themselves, and that the members of the Committee have not been appointed by reason of the fact that the company with which such member is connected is a crude oil purchasing company.

Redirect examination:

That the Stanolind Company is owned by the Standard of Indiana; that when the witness tried to get an increase of market for Oklahoma City, the price was never considered; that an effort to get a market below the posted price was never attempted because it would be practically impossible to find a seller; that the witness has never considered price in any way in attempting to get a market, but that he has never tried to get a market below market price; that the witness denied that he had been interested in maintaining the posted price, and again stated that price had never entered into his considerations in any way.

Hereupon, Court adjourned until 9:30 o'clock A. M. of June 30th, 1931, at which time all parties being present, Court reconvened, and further proceedings had in the above entitled cause as follows:

RAY COLLINS, recalled, further testified in substance as follows:

Redirect examination.

By Mr. Glasser, of counsel for plaintiff:

[fol. 461] That the witness has obtained a list of the pipe lines serving the Greater Seminole area, together with their size and capacity, and submits a paper which is marked as Plaintiff's Exhibit No. 16, which Exhibit as so identified is offered in evidence as part of the testimony of this witness, without objection; that the witness thereupon produced a

paper which is marked Plaintiff's Exhibit No. 17, which the witness identifies as list of the Oklahoma City pipe lines and loading racks, as filed with the Corporation Commission, and Plaintiff thereupon offered the Exhibit, which has been so identified as No. 17, as part of the testimony of this witness, without objection; that the witness thereupon produced a paper which is marked Plaintiff's Exhibit No. 18, and identifies same as a list of the companies owning production in the Oklahoma City pool, showing the number of wells so owned, with the potential production thereof, as of June 1, 1931, which Exhibit as so identified, Plaintiff offers in evidence as part of the testimony of this witness, without objection;

That the fields in which proration is not in effect, are Garber, Cement and Deer Creek, the total production of the entire areas being under 10,000 barrels per day; that the 20-barrel maximum applies to all pools, and any well in any pool which comes in at a greater production than 20 barrels per day, is immediately put under proration, and any well not making 20 barrels is not within the arrangement; that it was thereupon agreed by the Court, speaking through Judge Phillips, that the witness would be permitted to subsequently furnish the oil runs from the Oklahoma City and Seminole fields, with the account for whom the same were taken, and that when such document, when so prepared for the Seminole area, shall be identified as Plaintiff's Exhibit No. 19, and for the Oklahoma City area as Plaintiff's Exhibit No. 20, to be filed with the Court Clerk by the witness, and as so filed, offered in evidence [fol. 462] without objection upon the part of the Defendants; that said documents were later so furnished by the witness and filed with the Clerk, marked as so indicated and made a part of the Exhibits in this cause; that in the hearing before the Corporation Commission on the 4th day of March, 1931, the witness admits that while there under oath, in response to the following questions, made the following answers:

Question by Mr. Pierson:

"Q. Mr. Collins, at the present time, aren't the great majority of the refiners of the United States running from what we call hand to mouth from oil received daily?

Q. With no storage in the business at all?
A. I think that is true; yes, sir.
Q. The only storage now of any consequence belongs to the big companies which are drawing on that storage a little every day?
A. I think that is true."

That the witness does not now know whether such was true, but from common talk at the time that he gave such testimony so thought, and intended the answers to be true answers at that time;

That the potentials in the Oklahoma City field which are determined as to the specific wells are approved by the Commission as a whole without any order of approval as to specific wells; that it is also true that the potentials in the Greater Seminole area are approved as a whole by the Commission; that under the procedure the Umpire's office calculates a total of the potential and that figure is submitted to the Corporation Commission and by them approved as submitted; that there has never been a single change made by the Corporation Commission in any potential figured since the witness has been acting as Umpire in so far as the witness knows; that the witness does not have personal knowledge as to whether such plan of approval has been so followed in the Oklahoma City field;

That the witness does not know whether any evidence has ever been taken or order entered by the Corporation Commission for the determination of the boundaries of the [fol. 463] Oklahoma City field, and that the witness has attended all of the hearings of the Corporation Commission;

That the boundaries of the Greater Seminole area are indicated upon maps showing the boundaries of each group in that area attached to the petitions upon which the Corporation Commission's Orders were entered; that the Corporation Commission's Orders do not make specific findings of boundaries in the Greater Seminole area and the Oklahoma City areas except by reference to the maps.

Recross-examination:

That the Seminole pool came in in July, 1926, and the Oklahoma City pool on December 4, 1928; that the Seminole pool was developed and under proration before the Oklahoma City pool was discovered; that the major trunk pipe

lines ran through the Cushing pool and another just a short distance from the Greater Seminole area before the discovery thereof, and "they were close to the Seminole pool, some of them run to the east and some to the west" of the Seminole area through the State of Oklahoma before the discovery of that area; that these major pipe lines are the Gulf, the Texas, the Magnolia, the Oklahoma and the Prairie, and that connections were made between those pipe lines and the Seminole pool after the Seminole pool developed; that an established market for Seminole crude existed when the Oklahoma City pool was brought in; that the major pipe lines of the Shell and the Magnolia run through Cushing south, and are not very far from the Oklahoma City pool; the Oklahoma, the Gulf and the Texas run east of the Seminole, and would take considerable pipe line connection into the Oklahoma City pool; that the Gulf and the Texas do not have lines into the Oklahoma City pool; that the Magnolia, the Shell and the Oklahoma are nearer to the Seminole than the Oklahoma City, and connected with the Seminole before the Oklahoma City pool opened up; [fol. 464] that after the Oklahoma City pool opened and became of consequence, the Oklahoma, the Shell and the Magnolia built into the Oklahoma City area; that the Prairie, which appears on Plaintiff's Exhibit No. 17 to have a pipe line into the Oklahoma City field with a capacity of 45,000 to 50,000 barrels, is not now purchasing crude oil anywhere; that the capacity of the pipe lines listed into the Greater Seminole and Oklahoma City areas, appeared to be greater than the amount of oil which is run through those lines, indicating that the demand is less than the capacity of the lines; that there are many instances, and such has always been the case, in which lateral lines which lead into these trunk lines cannot receive the full capacity of the lateral lines that lead to the fields; that

"if they charged the lateral line leading into the field to its capacity the trunk line could not take the oil because it is 'bottled up', so to speak, by oil that has been taken from other sources and is already contained in the trunk line";

that the boundaries of these oil pools are well known so far as they are developed and that there isn't any difficulty in anybody knowing the extent of the boundaries; that such information may be obtained by simply going out and tak-

ing a look at where the producing wells are; that sometimes they drill a well beyond the proven area and it turns out to be a dry hole, which of course limits the field at that point; that oil pools are generally known by some name, which has been the practice in the industry throughout its history; that the Corporation Commission Orders follow this practice in designating pools; that on the map (attached to the petitions for the orders) a red line is drawn marking out each pool and the name of the pool is written within the line;

That the potentials that are shown on Plaintiff's Exhibit No. 18, being a statement of the May, 1931, potentials and allowed production of the producers, in the Oklahoma City [fol. 465] field, are the potentials before they are divided by 3; the Commission's Order No. 5369, dated October 28, 1930, is now referred to as "the base order" and since then the Commission has modified that Order some from time to time, as shown by subsequently entered Orders; and that in Order No. 5413 of December 30, 1930, the Commission modified Order No. 5369 to the extent of changes in potentials and allowables and perhaps in some other minor respects, and in the Commission's findings and orders in those and subsequent Orders where there was a change in the findings as to potentials and in the amount of the allowable production,

"the amount of the allowable production in each pool corresponded to the current demand for crude from such pool; and the same thing is true in the case of each of the orders".

Redirect examination:

That the peak of production in the Greater Seminole area occurred after the discovery of the Oklahoma City field; that the witness accounts for his office adopting one method for taking potentials in the Oklahoma City field and an entirely different method of taking like potentials

"in those fields that reached their peak of production after the Oklahoma City field came in",

by reason of the fact that

"the operators in the Oklahoma City pool agreed to the 'time basis' in this pool, while the operators in the Greater Seminole area elected to take theirs by gauges";

that the witness does not believe the Champlin Company ever agreed to either arrangement; and that the Champlin Company did not come into the Oklahoma City field until a long time after the operators there agreed upon the time basis of proration; that the East Texas field came in in the fall of 1930; that the opening of any underground reserve will naturally have the effect of lowering the posted price of crude oil, and

[fol. 466] "it lowers the price any time the underground reserve is increased and that is what took place when they opened up East Texas";

and had the effect of lowering the posted price in Oklahoma; that the East Texas field is a field of tremendous magnitude and very prolific production at a much less depth than Oklahoma City, with a correspondingly lower lifting and drilling cost, so that the production in the East Texas pool, in view of the factors just enumerated, will likewise tend to reduce price, posted or otherwise, in all of the oil producing areas in the United States; that any time a field comes in and shows a tremendous reserve, such fact has an effect upon the market regardless of whether the field is controlled or not; and the witness stated that in his opinion it is the enormous reservoir that has been shown in the East Texas field that has lowered the price of crude oil and that price will be lowered as a result of the factors which the witness has taken into consideration regardless of anything else, and that such result is but the working of the law of supply and demand; that the posted price in Oklahoma at the time the East Texas field came in was $1.07 per barrel, and that at the time the witness was testifying it wac 36¢ for Oklahoma City oil; that the current price of East Texas field oil at this time is 20¢ per barrel, and that the witness

"does not know how that compares with oil produced in Venezuela and imported at bare transportation costs into the United States".

Recross-examination:

That at the time the Seminole field was first prorated by orders of the Commission in 1927, the price of crude oil

in Oklahoma was better than $2.00; that the price of crude oil has constantly declined since those first Proration Orders within the State, until it is down to 35¢; that there was one increase in price

"which was in May of 1928 when proration was lifted [fol. 467] when the demand and supply were equal",

since then it has gone down;

"afterwards the available supply exceeded the market demand and proration was again instituted and the price went down and it has been going down ever since";

the witness believes that the price was down to $1.07 when the East Texas pool was discovered and had been so for quite a while before that; it went down to 67¢ last March and then down to 35¢; that "time proration" was in effect in the Oklahoma City field until the first of January, 1931, having been instituted in September or October, 1929; that plaintiff did not enter the Oklahoma City field until after time proration was in effect; that the percentage plan went into effect in said field the first of the year 1931; that when "time proration" was agreed upon by the operators in 1929, the potentials in the field were quite high and the operators submitted to the Corporation Commission the question as to whether the time method of operating the pool should be enforced, and the Commission approved it; that the operators presented before the Commission the question as to whether there should be a change from the time basis to the percentage basis, at a hearing, and each side presented their facts to the Commission, and the Commission decided in favor of the percentage plan, and so ordered.

Witness excused.

[fol. 468] A. B. CHESEBRO, was thereupon called as a witness on behalf of the Plaintiff, —, being first duly sworn, in substance testified as follows:

Direct examination.

By Mr. Glasser of counsel for plaintiff:

That he lives in Tulsa, Oklahoma; employed by the Carter Oil Company in the capacity of Assistant Treasurer

and has immediate custody of the records with reference to the disbursement of the Proration Expense Fund; that the witness prepared the document which has been offered as Plaintiff's Exhibit No. 15; that he does not have a similar list of the contributors for the period from January 1, to June 1, of this year, but did have in his possession upon the witness stand the books and records, and from such books and records testified that there were a few additional contributors not shown on the Exhibit, but that generally speaking the contributors are practically the same; that the witness was then questioned regarding a letter written to Ray Collins by J. C. Denton under date of February 28, 1931, attached to a letter from Burford, Miley, Hoffman & Burford, of February 4th, 1931, addressed to Ray Collins; that to the best of the knowledge of the witness he never saw the original of either of these letters; that the signature on the first paper is the signature of his secretary, and that the letter was written in his office; that it looks as if he had dictated the letter, but to the best of his knowledge he did not remember having done so; that thereupon the documents referred to are marked Plaintiff's Exhibit No. 21, which is then offered in evidence, to which offer the Defendants object as incompetent, irrelevant and immaterial, and thereupon the Court indicating that the objection would be overruled, a discussion occurred as to the signature of J. C. Denton upon the original of the letter of which a photostat was included in the Exhibit as so marked, and Counsel for the Defendants thereupon admit that Mr. Denton signed the original letter, of which the photostat was a copy; that the Court thereupon overruled the objection, and the Exhibit in its entirety was admitted in evidence.

No cross-examination.
Witness excused.

[fol. 469] L. McLennon, thereupon called as a witness on behalf of the Plaintiff, being first duly sworn, in substance testified as follows:

Direct examination.

By Mr. Glasser of counsel for plaintiff:

That he lives in Oklahoma City, employed by the Oklahoma City Producers Association, an organization of oil

companies operating in the Oklahoma City field; came in contact with the organization through a Committee that is now composed of J. S. Anderson, of the Anderson-Prichard Company; R. M. Williams, of the Indian Territory Illuminating Oil & Gas Company; A. A. Seligson, of the Slick-Urshel interests; A. L. Briggs, of the Coline Oil Corporation; and Wirt Franklin; that the witness has prepared a list of contributors to the expense fund necessary to maintain the organization which is made available and marked as Plaintiff's Exhibit No. 22, and thereupon identified by the witness as a list of contributors to the expenses of the Association for the month of May, 1931, and correct and accurate as so prepared in the office of the witness; thereupon the Plaintiff offers and the same is received in evidence as part of the testimony of the witness, over the objection of the Defendants, to which ruling an exception is allowed; that thereupon the witness produces a document which is marked as Plaintiff's Exhibit No. 23, which is identified as a statement of salaries and expenses of the Umpire's office in the Oklahoma City field for the month of May, 1931; that after having been so identified is offered in evidence by the Plaintiff, to which the Defendants object as immaterial, which objection is by the Court overruled, and exception granted to the Defendants; that the same arrangement has been continued through the months prior to the month of May, 1931, with some variations, but generally in practically the same budget and the same contributions; that there are 20 producers in the Oklahoma City field that solely contribute to the fund, and about 30 that do not; that the Committee which the witness has identified has func-
[fol. 470] tioned as such since March, 1931; that prior to that date the Committee that so functioned was composed of Mr. Franklin, Mr. Williams and H. B. Smith of the Sinclair Oil & Gas Company. W. W. Fleming of the Mid-Kansas Oil & Gas Company, and J. S. Sidwell of the Prairie; that the Association which the witness has identified was organized in January, 1929.

Cross-examination.

By Mr. Miley, of counsel for defendants:

That the Oklahoma City Producers Association is a voluntary association in which every producer in the field

may become a member if he so desires; that some producers in said field have not so elected and are not members of said Association; that the statement of the contributions for the month of May, 1931, (Plaintiff's Exhibit 22) shows a total daily average production of the contributing producers of 125,000 plus barrels, and that represents the greater part, though not all, of the daily average production in the Oklahoma City pool;

"That all of the members, all of the directors of the Operators Committee are either these producers in the Oklahoma City field or are officers or employees of producers therein";

that the expenses thereof being prorated among the voluntary members on the basis of such members daily average production for the month; that the members of the Committee which conducts the affairs of the Association, are elected by the members of the Association; that each member of the Association has a vote on a percentage basis; that the expense at the end of each month is prorated upon daily average production during the past month; that over the objection of the Plaintiff the witness was permitted to state that it is his understanding that the State is without available funds with which to pay for the extra help needed to carry out the proration scheme.

Redirect examination:

[fol. 471] That the Legislature that adjourned some thirty days before, had not appropriated any funds with which to keep the Act in operation; that the by-laws of the organization provided that when a vote be called for by the members, each such member shall be entitled to one vote per $100.00 or fractional part thereof, which the member shall have paid on the basis of the last quarterly payment prior to such vote; that one member may not own more than 25% of the total vote.

Recross-examination:

That about 83% of the production in the Oklahoma City field is represented in membership in the Association by contributions; the Operators' Committee which acts under appointment of the Corporation Commission in conjunc-

tion with the Umpire is not the same as the above mentioned committee elected by the members of the said association; the members of the Operators' Committee appointed by the Corporation Commission may or may not be members of the Association; an opportunity has been afforded to all the producers in said field to become members of the Association, and those who have not become members are small producers, or town-lot producers, in the north end of the field, and they said they were not financially able to come in; that two or three have refused to contribute on account of proration, not being in sympathy with it.

Witness excused.

FRANK COSAN was thereupon called as a witness on behalf of the Plaintiff, —, being first duly sworn, in substance testified as follows:

Direct examination.

By Mr. Glasser, of counsel for plaintiff:

That he lives in Oklahoma City, employed as a Clerk in the Umpire's office in the Oklahoma City field; that his superior officer is Otto Bradford, who is ill and unable to be here; that he had testified before the Corporation Com-
[fol. 472] mission on the previous day as to the potential of the Oklahoma City field, and stated that on the first day of July the potential would be 7,800,000 barrels; that such potential was predicated on the last 4-hour test taken beginning April first, 1931, multiplied by 6, but not divided by 3; that the witness did not know whether such potential was fictitious;

"It is the way the Commission told us to arrive at our potentials";

that the Commission did not tell the witness to testify as he did testify on the day previously; that the witness's exact testimony as to the potential upon the previous day was 7,718,244 barrels; that the following questions were asked and the respective answers thereto given:

"Q. Will you tell us briefly how you reach that calculation and that figure?

A. Each well in the field commencing seven A. M., April first, was ordered to take potential tests, and those tests were taken on a four-hour period. They were witnessed by representatives of various companies; turned into our office, and we computed them by multiplying that test by six.

Q. Were all the adjacent and adjoining wells closed in when these tests were taken?

A. Yes, sir, so far as our knowledge goes because we request it.

Q. If the rules were followed?

A. Yes, sir."

That the witness did not believe that there were any wells in the Oklahoma City field that were being operated upon what is known as an "Estimated Potential", with the possible exception of two or three that are being re-conditioned; that in the past some wells have operated without an actual potential, upon an estimated potential; that the witness does not think it was the practice at all to permit certain operators to take estimated potentials instead of an actual four-hour potential; that anyone that produced on [fol. 473] an estimated potential just so produced, and that the witness knew that this has been done but does not think that any of the companies have been permitted to so operate; that the Champlin Refining Company operated two wells on estimated potentials, and that outside of the Champlin,

"almost every company in the field had done so at various times";

that the witness was then questioned as to who made the estimates when estimated potentials were used, and stated that he imagined Mr. Bradford did so; that the witness was interrupted by Judge Cotteral, addressing to Counsel the following statement: "I don't understand what you are driving at", as the result of which, the following discussion occurred:

"Mr. Glasser: The purpose is to show the rule, which we contend to be a bad one, * * * was not enforced in

certain instances, that estimates were put upon these potentials without any kind of a test, four-hour or otherwise.

Cotteral, J.: Suppose they made a mistake, would that be any ground for enjoining the whole scheme?

Mr. Glasser: We don't quite believe that kind of arrangement could be a mistake. We think that would be something else, especially if we are able to identify the people that were permitted to do that.

Mr. German: You haven't——

Mr. Glasser: We are trying to.

Mr. German: You haven't had the witness explain the occasion for such a thing as that.

Mr. Glasser: You can do that on cross-examination."

That the witness identifies a document marked Plaintiff's Exhibit No. 24, as the "overs and unders" of the Oklahoma City pool at 7:00 o'clock a. m., June 1st, 1931, which document as so identified, was thereupon offered and received in evidence, over the objection and exception of the Defendants;

That the attention of the witness was directed to Phillips Petroleum Damewood Well, carried upon page 10 of said [fol. 474] document at an Est. Pot. of 53,910 barrels; that the witness then testified in substance that said well is not permitted to be operated on said estimated potential; that said well had just been completed and that it has a 65-day shut-down time at the end of which it is permitted to produce 8 hours, and that the Umpire's office takes the eight-hour production and figures from that the estimated potential, but the operator is not allowed to produce on that potential; the estimated potential is computed so as to have a figure as to the maximum production on the well based on the eight-hour test; the eight-hour production is not considered illegal over-production; and thereafter the well is required to take an actual test;

That there are a number of wells indicated upon Plaintiff's Exhibit No. 24, which have not had any potential of any kind taken; that the witness identified Mid-Texas Petroleum Floral Hills No. 1 well as being within such classification; that the estimated potential at which that well was being carried, was entered before the witness got there, the estimated production on said well having been figured from its last production; that it had been illegally overproduced

and had then been shut in for about four months; that such estimate was wholly arbitrary in the office of the Umpire; that there were other instances of like character.

Cross-examination.

By Mr. Miley, of counsel for defendants:

That the column in Plaintiff's Exhibit No. 24, in which estimated potentials are carried, goes to all producers for the purpose of information as to the status of all wells in the field; that where no potential has been taken pursuant to the orders of the Corporation Commission, every well is estimated as to its past record either during an eight-hour test when it first came in, or upon its last production, if it is a well that is illegally overproduced and is shut-in to make up the over-production, and this is for the information of all the operators as to the status of the wells; that [fol. 475] estimated potentials are not potentials upon which the particular well is permitted to produce; that under the orders of the Commission when a well first comes in, it is permitted to flow eight hours "for the purpose of testing," that is what is meant by the eight-hour period; it is then shut down for 65 days, plus its extra time; that a potential is taken at the end of that time in conformity with the rules of the Corporation Commission, after which it is permitted to produce on its potential so taken; that in all cases of estimated potentials the well upon which such estimate is being carried is either serving a 65 day shut in period and has not yet had its legal potential taken or has been overproduced and therefore not permitted to take a potential at the last time potentials were taken; and in some cases by reason of being then reconditioned, worked on, or cleaned out, "and they cannot take their tests"; that by reconditioning is meant drilling a little deeper, or plugging back, or caring for any one of a number of situations that may arise in the drilling of an oil well; that when a well gets out of condition, it is necessary to repair it in some way, and during such period of repair it is impossible to take its potential; that after the well is reconditioned its potential is taken on a four-hour gauge according to the rules of the Commission and the production it has made during the reconditioning process is charged against such well on its allowable based on such four-hour potential;

That the oil produced by any well during its eight-hour test following its completion, is charged against such well when it starts on production, that is, after the 65 day shut down period;

"it is made up so many minutes a day and at the present time 48 minutes a day";

That thereupon, the following questions were addressed to the witness, and the respective answers indicated given:

[fol. 476] By Mr. Glasser:

"Q. Did I understand you to say they were not permitted to take an allowable against these estimated potentials in any instance?

A. No, I didn't say that was an allowable.

Q. What have you got that estimated potential in there for on a given well?

A. If a well is over produced that estimated allowable is not an allowable. It is credited against over production.

Q. Do you mean to say every well that has an estimated potential here is an over produced well?

A. I wouldn't consider a 65 day well an over produced well, no, sir.

Q. Let's get the matter straight. What do you put that estimated potential in here for if it isn't to be used for allowable production?

A. To list every well in the field.

Q. That is the only purpose it is used for?

A. Yes, sir.

Q. It doesn't enter into the calculation of the total potential of the field?

A. No, sir, it does not. It does on the report; you use it.

Q. When you go before the Commission to give testimony as you did yesterday, had you had this report?

A. No, sir.

Q. On which to predicate that testimony?

A. No, sir."

Witness excused.

CHARLES C. CHILDERS, thereupon called as a witness in behalf of the Plaintiff, being first duly sworn, testified in substance as follows:

Direct examination.

By Mr. Glasser, of counsel for plaintiff:

That he is a member of the Corporation Commission of the State of Oklahoma, and has been such member for four years continuously; that he has not signed all of the Prora-
[fol. 477] tion Orders that have been made; that for two and one-half years he did not sign any such Orders—that his reason therefor, was that at that time he "didn't believe in Proration"; thereupon the witness was asked if he had recently signed some of the Orders, and in response stated that he had; and that upon being asked for the reason of his change in opinion, the following objections and rulings thereon were made:

"Mr. German: Object to that as incompetent, irrelevant and immaterial. It seems to me to be immaterial why one of the Commissioners dissented.

Kennamer, J.: What is the purpose of the question?

Mr. Glasser: The purpose is to try to show that we are engaged in a price-fixing instead of conservation enterprise.

Kennamer, J.: Let him answer.

Phillips, J.: Not his opinion. Let him state facts. Whether he believes in proration or not, I am not interested in that.

Mr. Glasser: I am not seeking to offer the witness's opinion.

Phillips, J.: That is all you have offered so far. Let's get down to something material.

By Mr. Glasser:

Q. Mr. Childers, from all the testimony that you have heard as a member of the Corporation Commission, and from all the matters that have come before you as such, I will ask you to state whether the effect of such orders as have been entered by the Corporation Commission were to stabilize or fix prices in the State of Oklahoma rather than conserving natural resources of the State?

Mr. German: Object to that as incompetent, irrelevant and immaterial, and calling for an opinion and conclusion of the witness.

Cotteral, J.: Objection sustained.

Mr. Glasser: Exception.

By Mr. Glasser:

Q. What was the purpose of the orders that have been entered by the Corporation Commission in connection with the proration program?

Mr. German: Object to that as incompetent, irrelevant and immaterial. The purpose appears on the face of the orders. They can't have him impeach them.

[fol. 478] Cotteral, J.: Objection sustained.

Mr. Glasser: Exception."

Witness excused.

G. E. Leverton, thereupon called as a witness on behalf of the Plaintiff, being duly sworn, testified in substance as follows:

Direct examination.

By Mr. Glasser, of counsel for plaintiff:

That he lives at Enid, Oklahoma, employed by the Champlin Refining Company as general auditor; that the witness had made a calculation to determine the products that the Champlin Refining manufacture and market from one barrel of 38 gravity crude oil as produced in the Oklahoma City field; that such calculation as so made by the witness is fully set forth in the affidavit of the witness filed in this cause in support of Plaintiff's application of June 13, 1931; that by reason of objection upon the part of the Defendants to the use of such affidavit, the Plaintiff is, over the objection of the Defendants, permitted by the Court to tender the evidence of the witness; that based on 1930 marketing and 1931 manufacturing experience, the Champlin Company could manufacture and market out of a barrel of 38 gravity Oklahoma City crude, 21 gallons of average 58-60 gravity, 437 end-point gasoline, 1.47 gallons of lubri-

cating oil of average grades, 3.78 gallons of 41-43 gravity kerosene, 2.56 gallons of 36-38 gravity distillate, and 11.55 gallons of 14-16 gravity fuel oil; that when the posted price of 38 gravity crude in Oklahoma City, as of October 25, 1930, was $1.01 per barrel, the market value, based upon the average price of the Oil Price Handbook for 1930, published by the National Petroleum News at Cleveland, Ohio, of such products so manufactured and marketed from [fol. 479] such barrel of crude oil was $1.64; that at that time the gathering and transportation cost of a barrel of crude oil from Oklahoma City to the refinery at Enid, while not sufficiently segregated upon the books of the Company to be definitely stated, may be accurately estimated at five cents per barrel; that to the posted price of the oil in the sum of $1.01, and the gathering and transportation cost of five cents, must be added the refinery cost of approximately 35 cents, making a total expenditure of $1.41 for each barrel of crude oil purchased in the Oklahoma City field, and thereafter manufactured at the Plaintiff's refinery; that thereupon Judge Phillips made inquiry of the witness as to whether "he had based cost on actual costs as near as you could allocate them," to which the witness replied, "yes, sir"; that the Champlin selling price is approximately Mid-Continent average price, and the witness used such Mid-Continent average more as a matter of verification from an outside source than for any other reason; that the witness was sure that the Champlin selling price would be within a very few cents of the $1.64 total; that an outside limit upon such estimate would be "3 or 4 cents";

That when the posted price of 38 gravity crude in Oklahoma City as of December 29, 1930, was 67 cents, the market value based upon the average price of the Oil Price Handbook for 1930 published by the National Petroleum News of Cleveland, Ohio, of such products as hereinbefore set forth, so manufactured and marketed from such barrel of crude, was $1.48; that at that time the estimated gathering and transportation cost of a barrel of crude oil from Oklahoma City to the refinery at Enid remained at five cents per barrel, and that the refinery cost likewise remained at approximately 35 cents, making a total expenditure of $1.07, which represents cost before depreciation on equipment;

That when the posted price of 38 gravity crude oil in [fol. 480] Oklahoma City as of March 5, 1931, was 63 cents,

the market value of such product as hereinbefore set forth, so manufactured and marketed from such barrel of crude; computed as heretofore outlined, was $1.37½ per barrel; that at that time the estimated gathering and transportation cost of a barrel of crude oil from Oklahoma City to the refinery at Enid remained at 5 cents per barrel, and that the refinery cost likewise remained at approximately 35 cents, making a total expenditure of $1.05 per barrel, which represents cost before depreciation on equipment; that when the posted price of 38 gravity crude in Oklahoma City as of June 1, 1931, was 35 cents, the market value of such product as hereinbefore set forth so manufactured and marketed from such barrel of crude, computed as heretofore outlined, was $1.01; that at that time the estimated gathering and transportation cost of a barrel of crude from Oklahoma City to the refinery at Enid remained at 5 cents per barrel, and that the refinery cost likewise remained at approximately 35 cents, making a total expenditure of 75 cents per barrel, which represents cost before depreciation on equipment; that in each of these last two instances, the market value and the Plaintiff's actual selling value came within the 3 or 4 cents estimate hereinbefore made;

That the Plaintiff's average lifting cost of a barrel of crude in the Oklahoma City field, calculated upon the actual cost incurred upon the Plaintiff's properties during the first four months of 1931, was $.053 per barrel; that such figure includes expenditures only, but does not take into consideration investment costs;

That the pine line which the Plaintiff Company had constructed from the Oklahoma City field to its Enid refinery was of the capacity of 18,000 barrels per day, and cost approximately $600,000.00; that the $.053, being 5.3 cents lift-
[fol. 481] ing cost per barrel, represents operating cost on the lease only, and that the 5 cent estimate for gathering and pipe line charges hereinbefore used, includes the cost of gathering the oil from the stock tanks on the lease with the transportation cost thereof to the Enid tank farm, so that the total cost of getting the oil from the bottom of the well to the refinery for manufacturing purposes is $.103, or 10.3 cents per barrel;

That Plaintiff Company had in storage at its Enid Refinery on the respective dates hereinafter set forth the total gallons of gasoline set opposite each of said dates:

January 1, 1931, 7,866,611 gallons;
January 1, 1930, 6,598,533 gallons;
January 1, 1929, 5,196,055 gallons;
January 1, 1928, 6,598,478 gallons;

and on

June 1, 1931, 4,549,092 gallons;
June 1, 1930, 4,712,800 gallons;
June 1, 1929, 6,316,711 gallons;
June 1, 1928, 5,794,629 gallons;

That the witness thereupon identifies a document which has been marked as Plaintiff's Exhibit No. 25, as a statement of interstate and intrastate sales of refined products by the Plaintiff from July 1, 1928, to May 31, 1931, F. O. B. Enid, Oklahoma, segregated by years; that the Exhibit so identified is offered in evidence by Plaintiff, to which the Defendants object as incompetent, irrelevant and immaterial; the objection is by the Court overruled, and the Defendants are granted an exception;

That the witness thereupon identifies a document which has been marked as Plaintiff's Exhibit No. 26, as a statement of interstate and intrastate sales of refined products by Plaintiff in volume by major classification thereof from July 1, 1928, to May 31, 1931; that the Plaintiff thereupon offers in evidence the Exhibit as so identified, to which the Defendants object, which objection is overruled, and the Defendants are granted an exception;

[fol. 482] Thereupon the witness identifies a document which has been marked Plaintiff's Exhibit No. 27, as a statement of the cost in the investment in the Plaintiff's refining plant, pipe lines, tank cars, filling stations, and marketing equipment, segregated into the investments in the various branches of said business within and outside the State of Oklahoma; that the investment cost so itemized represents the costs of equipment employed by Plaintiff from the time oil is reduced to possession at the top of the ground until it is delivered to the customer in tank cars; that the refinery and pipe line investment as of May 31, 1931, shown upon the Exhibit, was $6,986,267.41; tank cars, $1,295,222.21; filling stations, $3,096,681.81; a total of $11,378,151.51; that Plaintiff thereupon offers Exhibit No. 27 in evidence, to which the Defendants object as incompetent,

irrelevant and immaterial; which objection is overruled, and the Defendants are granted an exception;

That thereupon the witness identifies a document marked Plaintiff's Exhibit No. 28, and states that it is a graph drawn to scale showing the purchases of crude oil in Oklahoma by months by the Plaintiff, together with crude oil runs to stills in each month, as well as the average price paid by Plaintiff for crude oil so purchased during each month for the calendar years from 1920 to 1924, inclusive; that thereupon the witness identifies a document which has been marked Plaintiff's Exhibit No. 29, as carrying the identical information for the calendar years 1925 to 1930, inclusive, together with the first five months of 1931; that thereupon the Plaintiff offers Exhibits No. 28 and 29 in evidence, to which the Defendants object as incompetent, irrelevant and immaterial, which objection is overruled, and the defendants are granted an exception thereto; that the [fol. 483] graphs as so drawn accurately reflect the books and records of the Company; were made under the supervision of the witness, and that the two Exhibits disclose an accurate set-up upon their respective subject matters.

Cross-examination.

By Mr. German, of counsel for the defendants:

That the Plaintiff has been buying about 3½ to 5 million barrels of crude oil per year, and during the period of time of such purchases, the price has ranged from $4.81 a barrel in 1920, to $1.33 in 1930, and to an average of 68½ for the first five months of 1931, and that the Company is still in existence. Objection was made to the last portion of the question for the reason that the same was not proper cross-examination; the objection was overruled, and the Plaintiff was granted an exception;

That the Company is not now buying on the average as much crude as it did last year or the year before; that it purchased 4,821,000 barrels in 1929, and 4,660,000 in 1930; [fol. 484] that the witness would use the books of the Company to calculate the gain or loss in the operation of its business; that in order to determine whether the Company is making or losing money in its refinery operations over a period, an income statement and balance sheet would be necessary, and that such income statement should include

the costs of charging stocks, transportation costs, refining and sales costs; interest, depreciation, maintenance, administration and possibly other overhead expenses; that such a statement with reference to the operation of Plaintiff Company's business has not been produced here;

That the Plaintiff's pipe line was built into the Oklahoma City field in the latter part of 1930; that the Plaintiff Company has in this State a great many competitors in the refining business and in the sales of refined products; that these competitors buy crude oil and sell their refined products in competition with the Champlin Refining Company; that there are probably fifty such companies so engaged in Oklahoma; that such other companies may be better refiners and operate their business upon a more economic basis than the Plaintiff;

That the Champlin Refining Company does not "sell a great deal of" crude oil; that Exhibit No. 26 carries crude oil sales for 1930 at 838,405 barrels, and for the first five months of 1931 at 595,431 barrels; that the witness did not know the history of the transactions that made up these items; that Exhibit No. 26 shows that the company sold in intrastate and interstate commerce during the twelve months of 1929 crude oil amounting to 463,328 barrels, and during the last six months of 1928 it sold 3,634 barrels; that the witness was thereupon asked if the Company had been increasing its sales of crude, and replied that if the statement shows that, yes.

Redirect examination:

That the witness did not have personal knowledge of [fol. 485] transactions in the field in the matter of sales of oil or where it was produced; that the figures on the Exhibits identified by the witness were taken from the records without personal knowledge as to the transactions; that the Skelly Oil Company, of which Mr. German is general counsel, is one of the principal competitors of the Plaintiff Company throughout its trade territory.

Recross-examination:

The witness in response to the following questions, gave the respective answers quoted:

By Mr. German:

"Q. The Skelly Company's refinery is at Eldorado, Kansas?

A. I think they have a refinery there.

Q. And have none anywhere else?

A. I don't know.

Q. And don't purchase any Oklahoma crude for their refinery?

A. I don't know.

Q. Have no pipe line into either Seminole or Oklahoma City fields?

A. I don't know.

Q. Don't you know they do not?

A. No, sir.

Q. Have no pipe line into Oklahoma at all."

that when the witness used the term "competitor" he meant from the sales end of the business; that the witness could not recall that the Skelly Company had any filling stations in the immediate vicinity of Enid or Northwestern Oklahoma, but that as soon as the Plaintiff Company crosses the Kansas line it runs into them, just as it runs into the sales end of the business of a great many other refiners that are the Plaintiff's competitors in Oklahoma and in all the other territory where the Plaintiff sells refined products.

Witness excused.

[fol. 486] Thereupon the Court recessed until 2:00 o'clock P. M. this day, at which time, the Court reconvened, all parties present as heretofore, the trial of the above cause was resumed and further proceedings had therein as follows:

Mr. Glasser of Counsel for the Plaintiff, thereupon directed the attention of the Court to the fact that the Plaintiff was engaged in preparing two Exhibits which were to be identified as Nos. 30 and 31, the first of which Exhibits will give the total production of the fourteen major operators in the Seminole area of the producing or working interests in that field, and the second of which will give the

like information for the Oklahoma City field, for all operators in that field that have filed Gross Production Tax Reports as required by law, which Exhibits are being prepared from the original Gross Production Tax records in the State Auditor's office, and that the Exhibits are offered as a part of the testimony of this witness, and when completed will be filed with the Clerk of the Court; that there was no objection, and that the Exhibits were subsequently prepared by this witness and filed with the Clerk of the Court;

RALPH ARNOLD was thereupon called as a witness in behalf of the Plaintiff, and, being first sworn, testified, in substance, as follows:

Direct examination.

By Mr. Glasser, of counsel for plaintiff:

That he resides in Los Angeles, is a Geologist and Petroleum Engineer, with a collegiate education, two doctor's degrees and now has two or three honorary doctor's degrees in the geological field; that he taught the first course in Petroleum Geology and Engineering at the University of Chicago, in Harvard University and in the Massachusetts Institute of Technology; that for six years he was a member of the Geological Survey of the United States [fol. 487] Government, organized the Petroleum Division of the United States Bureau of Mines, had charge of the oil and gas work at the Treasury Department during the war, is chairman of the Advisory Committee appointed by the California Courts in connection with litigation over gas-oil ratios in the Santa Fe Springs pool near Los Angeles, and was chairman of the California delegation to the Governors' Council in Washington last winter; is a member of all scientific societies whose purposes relate to the subject of Geology and Petroleum Engineering; many years ago wrote the first text book on "Phases of Waste" and prepared the first book published by the Bureau of Mines on the subject; that in 1914, or 1915, prepared for the Government, Petroleum Bulletin No. 6, apropos the subject, then acting as Consultant Geologist for the United States Bureau of Mines; that he has been employed as a

practical advisor in geological matters in Canada, the United States, Mexico, Venezuela, Trinidad and Colombia; that the witness classifies himself as a conservationist;

That when asked to define the difference between economic waste, physical waste and underground waste, as understood by geologists and petroleum authorities, the witness stated that his understanding is that economic waste is a waste that results in a waste of dollars and cents when oil is brought to the surface when it is not needed and used for purposes that substitutes might be used, in other words, having to do with the dollars and cents side of the oil business; that physical waste is the actual waste of oil and gas as substances, as where brought to the surface and allowed to evaporate or leak away, and "cases of that kind actually are wastes after we have acquired the oil and gas themselves"; that underground waste is a term that has been used a great deal lately to cover theories with regard to what may take place underground during the recovery of oil; that underground waste is a matter of difference of opinion among men and is absolutely impossible of proof in [fol. 488] practically all cases that have come under the witness's observation; that "conservation is utilization with maximum efficiency and minimum of waste"; that this definition was first announced years ago by Dr. Willard C. Hays, Chief Geologist of the United States Geological Survey during the time when the subject of conservation was uppermost in the minds of the American people during the Roosevelt administration;

That the witness has had personal observation of the operating methods in the Oklahoma City field, and is familiar with the geology thereof; that a study of the Arbuckle Mountain section helps to understand the underground conditions in the Oklahoma City, Seminole and adjacent fields; that the witness has made such study, the principal features of which are that in going up-grade on the south side of the mountains the eye can see what it would see if going down in an oil well in the area, in other words, an examination of the exposed sections of the mountain reveals the well-log that is determined through the drilling in the adjacent oil producing areas; that there is present the opportunity of examining the formations, the characteristics of the sands and limestones, with the relationship of the various beds, their thickness, all of which

gives one a wonderful opportunity to learn something about underground conditions; that there has been an upheaval which exposes the formation in cross-section, and is one of the most remarkable exposures to be seen anywhere, inasmuch as nature has laid open a panorama of underground conditions in these fields for the Geologist's study;

That the following respective answers were thereupon given by the witness, to each of the questions indicated as propounded:

[fol. 489] "Q. I will ask you to state whether in your opinion the present method of handling the Oklahoma City field wells is a wasteful method?

Mr. German: Object to that as incompetent, irrelevant and immaterial.

The Court: Overruled.

Q. I will ask it another way. What is the present method of handling the Oklahoma City oil field wells?

A. To open the wells intermittently to test their capacity for production, and then to shut them in to a very marked degree for long periods of time, between these periods of open flow.

Q. Is that a wasteful method?

Mr. German: That is not the way the wells are operated at the present time in the Oklahoma City field.

Cotteral, J.: We don't know.

Phillips, J.: He says it is.

Mr. German: But the proof is they are operated upon a percentage basis, and if that is what the witness meant all right.

By Mr. Glasser:

Q. To clarify the situation do you understand the method under which the Oklahoma City wells are now operated?

A. My understanding is——

Q. Just yes or no.

A. I believe I do.

Q. Will you state for the record what you understand that method to be and see how it lines up with the other testimony?

A. My understanding is these wells come in, in order to find out their relative productivity they are opened up wide,

full capacity for four hours; then they are shut in to a certain amount, that is prescribed by the Commission, the umpire or some other authority, shuts them down to practically two per cent of their capacity.

Q. Now if a well is kept closed for a 65 day period absolutely tight, before it is allowed to produce any oil, does that factor enter into your calculation in this connection?

[fol. 490] A. If it is kept absolutely [illegible]ed tight before it is brought in, the conditions under ground will be the same at the end of the 65 days as they were at the start. It is only for the periods of wide open production that the trouble begins in the bottom of these wells.

Q. What trouble, in your opinion, begins?

A. Well, a great development of gas around the well. When a well is opened up for initial production and allowed to flow unrestrained there is a terrific pressure at the bottom of the hole, and it is much greater there, of course, than at the top or it wouldn't flow, but the gas that is held in solution in the oil is allowed to come out very rapidly, and it throws out a great deal of oil up to thousands and thousands of barrels a day, and gas comes out at the rate of millions and millions of cubic feet, and what is known as the gas oil ratio is usually pretty large at that time. The gas comes out and the minute they are shut in the space around the bottom of the well fills up with gas because the gas has a head start, bypasses the oil and gets in around the base of the well, and when the well is suddenly shut in it leaves that gas surrounding the well. Now exactly what happens to the surrounding reservoir after that is shut in we know very little. We are making studies in these various fields. I have no doubt in this field some of the larger companies are studying the conditions that are probably existent at the bottom of the hole, and in the reservoir opposite or adjacent to it, but from what knowledge I have been able to obtain from the engineers of the principal companies, those who are operating in the field, those who are making this special study, I find there are just about as many ideas as to whether there is waste or whether there is not waste, as there are individuals I have interviewed.

Mr. German: I want to renew my objection, and predicate it upon this proposition: The witness admits that there is a divergence of opinion as to whether or not this method

is wasteful or is not wasteful. The Corporation Commission pursuant to the language of the statute, decided after the taking of testimony that this was a proper way to operate these wells to take the potentials, and then pinch them in on a percentage basis afterwards, and that to operate the wells in the form and manner in which they are operated accomplishes conservation, prevents waste and protects the co-equal rights of the producers in the field. Now the Commission having decided that question, predicated upon testimony taken by it, it is not subject to review here under the allegations of the bill. It is simply alleged that there was no evidence before the Commission showing that waste would occur; no proof on that subject has yet been made, but I take it they will introduce in evidence the testimony before the Commission and contend it fails to show that there was any proof of waste, but here we have a case [fol. 491] where experts may differ in their opinion and do differ in their opinion.

(Argument.)

Cotteral, J.: Let's receive the evidence and we will consider its relevancy later.

Mr. German: Exception.

By Mr. Glasser:

Q. Are there well recognized methods of control in the production of oil and gas?

A. Yes, there are. I think what you mean though is what we speak of as the control in the occurrence of oil and gas in the well itself.

Q. What are those well recognized controls?

A. It is rather a technical term. There is hydraulic control, volumetric control and capillary control. To just briefly explain what they are; there are certain underground reservoirs in which the laws of hydraulics control. Those are the coarse grain sands and lime stones, coarse lime stones and things of that kind, and then there are other fine grain sand stones in which the laws of capillarity control. The action of gas and oil and water in those various reservoirs are entirely different under the different type control, so that postulations regarding what occurs

in one case would be entirely different under another control.

Q. How do you determine which control the pool or field is under?

A. The best way, if we know the rate of decline of production and the rate of decline of the pressure in the wells, we can tell absolutely. If the rate of decline in the pressure is greater than the rate of decline in production we have volumetric control. If the rate of decline is greater that the pressure we have the capillary control. Under the capillary control, the edge water, for instance, in the field, never encroaches on the field itself except very slightly at the edge. The Cushing field is one of the illustrations of that where hydraulic and volumetric control prevail. The hydrostatic pressume is the controlling factor and edge water and bottom water are pressing against the oil at all times; move it.

Q. Does the withdrawal of the oil from the field either in a short period of time or over an extended period of time enter into this discussion?

A. Yes.

Q. Will you amplify that please?

[fol. 492] A. Well, some people take the stand that the rapid production of an oil well will create waste, that is, means the water will come in quicker. Now the reason in a great many cases the water comes in quicker is because the production is taken out quicker. We have a 30,000 barrel well producing it wide open for ten days that produces 300,000 barrels of oil, and if it is under hydrostatic pressure, 300,000 barrels of water will follow that oil up, and if the well happens to be within the range where the water and oil contact, the bottom of the well, you begin to get water, but if you produce that oil over a period, say 500 barrels a day, that would take it about 60 times as long, it is natural the water would take 60 times as long to come into the well.

Q. Is there any way by which an engineer or geologist can determine for certain which method will get the greatest volume of oil?

A. No, sir, I don't think there is."

That in the opinion of the witness, and from the data which he has been able to get, he was of the opinion that

the Arbuckle lime area in the Oklahoma City field is probably under volumetric control and that such control will also be found in the upper sand of the Simpson in what is known as the Wilcox; that the School Land formation has so far shown very little evidence of water and being of thinner grain, would indicate that it is under capillary control; that intermittent production in the wells in this field would tend to make the conditions around the base of the well very unstable; that the witness thinks

"it almost impossible to determine which control would prevail in the different formations in said field, until some stable conditions of production were brought about, where the wells would be allowed to flow over a certain period of time under a certain amount of restraint."

that within the experience of the witness, a producing area in Trinidad, British Colombia, where the sands were of very fine grain, with very great gas pressure, in which the original well came in at a very large flow, of approximately 30,000 or 40,000 barrels a day, the greater part of the recoverable oil was obtained in the first four or five days of production; that the wells would then sand up, [fol. 493] after which the operators would drill out the sand, and the best production that could be gotten would not exceed 500 barrels a day for the rest of the life of the well; that as a result thereof, 200,000 barrels of oil were produced in five days, which, if produced in any other manner, would have taken years to bring about; some of the results there showed that the well produced very much more than 50% of its ultimate production in the first five days; that a Mr. McKnight, one of the best American operators employed the theory of perforating the casing in an effort to produce these wells, and after having spent $200,000.00 or $300,000.00 in an effort to produce the oil in that manner, found that he could not get nearly as much oil as when the well was produced wide open; that the witness is not citing the illustration as a rule, but as a situation; that in California wide open flow has been used over practically all of that state's fields for a great period of time, until the last five or six years and has had the greatest recovery per acre of any oil state in the Union, which causes the witness to hesitate upon the adoption of the theory of the curbing method of producing oil wells, as bearing upon ulti-

mate recovery; that a constant flow of a well in the Oklahoma City field under reasonable restrain would more nearly conserve the natural resources of the field than to intermittently "open flow" the identical well; that assuming that a given well has an allowable production of two per cent of its potential, and assuming that the operating company owning such well flows it wide open for two or three days to get its allowable for that month, and thereafter closes the well down for approximately 27 days remaining in the month, such type of operation would be more wasteful than the steady flow of such well under restraint; that a method of production which permits an operator to take within three or four days his entire allowable production in a given well, for a given month, is in the opinion of the witness, a wasteful method; that the method of production which would give the greatest recovery per acre in the Oklahoma City field is that method [fol. 494] which would result in the use of the best gas-oil ratio, that is, the method of production which would place a barrel of oil at the top of the ground with the use of the least amount of gas in doing so;

(a) for the reason that gas energy, which is the motive power of ultimate recovery, is thereby conserved; and

(b) "the conservation of that gas and its use after it reaches the surface of the ground is in the line of real conservation of natural resources";

that the witness does not know what would be the best gas-oil ratio in the Oklahoma City field, because of the lack of sufficient data at the present upon which to base an intelligent conclusion;

That the following respective answers were thereupon given by the witness, to each of the questions indicated as propounded:

"A. Because it practically requires a study of each individual well to discover just what is the most economic way to handle it, just what the best gas oil ratio is. That study can be made without opening the wells wide open——

Q. How?

A. By just changing the pressure.

Q. Explain that please.

A. Well, the control of the pressure in a well can be effected in two ways. You can either have your well finished up with just the casing in which case the oil comes into the casing and has to come out of the top of the casing or you can put in tubing inside the casing and by shutting off the flow of oil through the casing, force the oil out of the tubing. The smaller the tubing within reasonable limits you put in a well of that kind and the smaller hole you make the gas force the oil through, the more effective is the propulsive power of the gas. To find out the exact ratio between the gas and the oil under conditions of that kind is a matter of test, and that is being carried out in a good many fields in the United States at the present time, and could be readily carried out here if the wells were finished with tubing, but I understand a great many of the wells are not finished with tubing and it would involve serious difficulty in putting tubing in at the present time; the cost would be quite considerable for a well; probably five or six thousand; possibly more.

[fol. 495] Q. Is there in your opinion sufficient data now available on the Oklahoma City field that will enable any of these engineers to determine the proper gas oil ratio on a given well?

Mr. German: I would like to object to this question. I have let the questions go on about whether they ought to have a gas oil ratio system in the Oklahoma City field and what would be the best one without objection. I didn't know he was going to proceed so long. The law of Oklahoma doesn't call for a gas oil ratio. It is immaterial to any issue in this case as to what would be a proper gas oil ratio or whether it could be established.

Kennamer, J.: He already answered and said there wasn't sufficient data to determine that.

Mr. Ramsey: That is the main ground the Corporation Commission acts on. They claim they are losing gas over here.

By Mr. Glasser:

Q. Is the term 'underground waste,' a substantive fact in petroleum engineering?

A. No; not at the present time.

Q. Now is there any recognized, accepted method of determining under-ground waste?

A. None so far as I know.

By Phillips, J.:

Q. Isn't there such a thing as drilling an oil well or operating it in such a way that it will lose the maximum recovery under the ground?

A. They say so, yes.

Q. Don't you know that?

A. It is a matter that is very difficult to prove.

Q. I know there are things difficult to prove, but aren't there recognized methods of efficient and proper operation?

A. Yes, sir.

Q. In setting your casing and so on?

A. Yes, sir.

Q. That is looked upon as wasteful?

A. Yes, sir.

Q. When you don't follow the best method don't you lose under-ground?

A. We assume we do, but in a number of cases we find what we originally thought were wasteful methods have turned out to be the very best methods of production in the [fol. 496] field. I can cite another California field——

Phillips, J.: I don't care about any more speech-s on California. All I care about is the local situation.

A. The local situation may develop something of that kind; I don't know."

Mr. Glasser resumes the examination of the witness:

That the factors that govern gas-oil ratio are natural and artificial; that the natural factors are those of production, which are the type of reservoir, rock pressure, the character of the oil, and the volume of the gas, etc.; the artificial factors are the methods used in drilling the well, its completion, the way it has been tubed and the way that it is handled after it is completed into the oil sands; that gas-oil ratios will not be found to be the same in each well, and will not remain constant in any well; that each well remains a problem within itself; that the behavior of each well can only be considered, and thereafter calculated upon

physical or actual tests, which are the only methods recognized by competent engineers;

That the best measure of conservation in the final analysis is that measure of conservation that makes possible the most good that can come from our natural resources; that the ultimate recovery per acre would be as good a measure as any; that in the opinion of the witness, the flowing of the well steadily at an oil-gas ratio that would be determined as best for each particular well, will result in the greatest ultimate recovery per acre from the Oklahoma City field; that the witness doubts if any such wells should ever be flowed wide open; that in witness's opinion the unrestricted pinching in of a well to say, 2% of its potential, has an injurious effect upon the well; that the witness is unable to say what would be the best percentage of the total production at which the wells could be operated, but would say offhand from practical experience, that somewhere between [fol. 497] 33⅓% and 66⅔% would probably be about the best; that physical factors upon a scientific basis cannot very well be co-ordinated in the interest of conservation with economic factors incident to proration, for the reason that the operator does not always, whether selfishly or otherwise, try to get the oil out of the reservoir at the least expense to the gas reserve, which is the great natural resource along with the oil; that the amount of oil that may be so produced in a given well should be determined by gas-oil ratio, and if interference with such gas-oil ratio be brought about by arbitrary rulings, the best results will not be had; that posted price of any product should not enter into the matter of its true conservation; that that kind of conservation is economic; that the witness was not permitted to answer as to whether any system of scientific control of the oil producing areas in the State under a system of proration should be in the hands of outside agencies rather than in the direct control of the officers of the State, to which ruling of the Court the Plaintiff was granted an exception.

Cross-examination.

By Mr. German, of counsel for the defendants:

That the witness had actually spent something like a week studying the Oklahoma City pool conditions, first in

the field, then in his office in Los Angeles, going over data which he believed to be effective, and then returning and in company with R. L. Clifton, who has heretofore testified, spending two or three days in going over the details and engaging in conversation with a number of Engineers of other companies since the witness had been in Oklahoma; that some control of the production of oil in a flush field should be invoked to conserve the oil; that such control should depend upon local conditions; that the State of California has a gas-oil ratio statute and that the witness has made a special study of that subject in his work in that [fol. 498] State; that the witness, in response to the question,

"Q. You say that the question of underground waste is not at the present time a determined fact? Did you say that?"

replied:

"A. I think I made the statement it was very hard to prove."

for the reason that oil fields have been thought to have been finished and new methods of operation thereafter have enabled the owners of such areas to greatly increase their ultimate recovery; that such recoveries are the result of turning to advantage a prior mistake; that waste must be confined to something you actually have in your possession;

Thereupon the following questions were propounded to the witness, and the respective answers as indicated, given:

"Q. Well, if you leave the oil in the ground unrecovered when you could have recovered it by proper operation, that is underground waste isn't it?

A. Yes, you can define it that way, but you have to prove, of course, that the oil is there, or found it out afterwards the oil is there.

Q. That would be underground waste, if you find out afterwards that the way you operate the pool left in the ground oil which if you had operated some better way would have been recovered, then you would have found out you committed underground waste?

A. I would answer it this way: When the oil was recovered under the original method of use you couldn't re-

cover any more, so there wasn't any such thing as the other method in existence; nobody knew about it.

Q. They didn't happen to know about the other method.

A. Of course, they didn't.

Q. If they had known it they would have produced underground waste?

A. Of course. It wouldn't have been called underground waste because it would have been called the regular method of production of oil and gas for that field.

Q. Would it not be entirely possible for serious underground waste to occur in the Oklahoma City field?

[fol. 499] A. Would it be possible?

Q. Yes, sir.

A. Certainly, I say it is possible.

Q. And would be due to the improper method of operating the pool?

A. Not so much sometimes as the improper method in finishing the wells.

Q. As well as in operating the wells?

A. Yes, more likely the first case."

That by a theoretical method of calculation, in the formation, gas is first, then underneath it is the oil in which gas is held in solution and then water is underneath the oil; that the oil cannot be recovered if the wells are finished by seating the casing up in the free-gas area instead of seating it near the top of, or in the oil-saturated portion of the formation;

That the following question was propounded to the witness:

"Let us assume the Oklahoma City field operators all finished their wells with the casing seated up in the gas, and operated them that way, when all producers could find out the other way wouldn't they commit serious underground waste?"

to which the witness replied:

"They would commit a crime, I would think."

and that such waste cannot be put under the classification as being incident to recovery methods but should be classified as the result of faulty drilling methods; that, however

classified, the result in the opinion of the witness would be underground waste; that thereupon, Mr. Ramsey, of Counsel for the Plaintiff, addressed Mr. German with the query:

"Do you contend that all or any of the operators in the Oklahoma City field have put their casing on top of the gas?

Mr. German: Some did and some did not.

Mr. Ramsey: Has the Commission ever made any rule or order about that kind of casing?

[fol. 500] Mr. German: The Commission has had it before them but it hasn't issued any regulation on the subject."

That thereupon certain questions were addressed to the witness, which were in their respective order answered as follows:

By Mr. German:

"Q. Now the term underground waste has been a term used in the oil industry for many, many years hasn't it?

A. Yes, sir.

Q. How long would you say?

A. Well, I used the term waste in a little different sense than that in a publication back in 1914; that was 17 years ago.

Q. You didn't use the word underground waste there?

A. No. It was in connection with the gas that was produced with the oil and allowed to go to waste after it reached the surface of the ground.

Q. You do know, don't you, the term underground waste was commonly used, at least as early as February 11th, 1915 by the oil industry?

A. I don't know that I did, but I should say it probably had been a good while before that.

Q. And it had a commonly understood and accepted meaning in the industry?

A. Well, that is a point I can't state, because it is a very indefinite term. Through all the period I have been in the industry for thirty years, it has been a very indefinite term.

Q. Broadly speaking, underground waste means leaving oil underground that could have been recovered, doesn't it?

A. That is one definition of it.

Q. That is the way oil men look upon it, isn't it?

A. Another way is allowing water into the oil. You can deteriorate the quality of the oil by letting water mix up with it.

Q. Would you call that underground waste?

A. I would call that waste, underground waste, but the actual determination of it is one of the most difficult things, I think.

Q. What do you mean actual determination of it?

[fol. 501] A. For instance, when you bring water in contact with the oil under ground, and when the oil reaches the surface of the ground, it has a gravity of 24 degrees say, 24 gravity, and we say that probably the oil originally had a gravity of 29 degrees. We say we think it did, but the only oil that ever came out of that well came out about 24.

Q. The occasion for saying that underground waste occurred there is because the oil producer concludes that he has done something which reduced the gravity of the oil from 29 to 24?

A. He thinks he did. It is very had for him to prove it.

Q. You can't look down into these oil formations with an X-ray, can you?

A. Well, we do it sometimes when we drive a tunnel into vertical beds and get the same results, but ordinarily no.

Q. So all of your knowledge about the formations in which oil has accumulated and all of that and as to the best way to recover oil in order to obtain the greatest recoverable oil, is predicated upon the knowledge you have acquired from a study of things that have happened in the oil fields?

A. Yes, sir.

Q. Primarily, isn't that right?

A. Yes, sir.

Q. And you realize that underground waste can occur?

A. Yes, indeed.

Q. Now the ideal, the best system to which you refer, or counsel did, I have forgotten which, is the one which will recover the most oil isn't it?

A. Most oil for the least loss of energy or power or whatever it is we are utilizing to bring the oil to the surface."

That most of the formations in California are rather coarse, those in Trindad very fine; that the sands in California as a rule are very thick, thousands of feet of alter-

nating shale having been found; that Counsel asked the witness if the conditions which existed in California do not call [fol. 502] for methods quite different from those in Oklahoma, to which the witness replied:

"That is what * * * we are so uncertain about. With all our methods we have very little definite information. Geology is not an exact science. For that reason it is very hard to make a positve statement about it.";

that conservation of gas energy and the proper utilization thereof in the recovery of oil, is one of the most important matters before the American people at this time; that there are two profound reasons for this statement, the one being that there will be a greater recovery of oil, and the other that the gas will be produced at the time and in a way in which it can be used for the production of casinghead gasoline and as a fuel after it has performed its operation of bringing the oil to the surface; if the gas is not produced too fast, it can be utilized instead of being turned into the air;

That Judge Phillips at this point addressed certain inquiries to the witness, which we quote:

By Phillips, J.:

"Q. You might be operating a given well or drilling in a given oil sand; one set of experts might say the way to do this is to get the most recovery and suffer the least waste underground is this way; another set of experts in equally good faith, might give as their judgment an entirely different way, and yet when it is all over if you can figure it out and have an exact determination one might be better than the other. One might develop waste and the other not, yet both of them could be in good faith in the light of their experience?

A. Yes, sir.

Q. That is what you mean when you say this underground waste is uncertain and indefinite?

A. That is just what I mean; a question of personal opinion and personal experience.

Q. Yet there might be underground waste resulting from negligent operation.

A. I think there are certain phases of it obvious even to the layman.

Q. For instance, your example of setting the casing in the gas itself instead of in the gas saturated with oil?

A. Yes, sir, it wouldn't take an engineer to figure that out.";

[fol. 503] That a large well often times offsets a dry one, proof to some extent at least, of the uncertainty of our knowledge of conditions underground;

That in the present state of the industry, a method has not yet been found that will enable any producer to recover all of the oil in an oil-bearing sand, so that in all production in all of the oil fields, there is some oil ultimately unrecovered; that methods are now being sought to remedy this situation; that methods have been found which enable the producer to take out a large per cent. of the oil which has heretofore been unrecovered; that such practice is now being employed in the old wells in Pennsylvania.

Witness excused.

E. G. WILMOTH was thereupon called as a witness on behalf of the Plaintiff, and, being duly sworn, testified in substance as follows:

Direct examination.

By Mr. Glasser, of counsel for plaintiff:

That he resides at Enid, Oklahoma; has been employed for the past four or five years in the capacity of Manager of the pipe lines of the Champlin Refining Company; that the witness had personal knowledge of the transactions involved in the entries upon the Plaintiff's books set forth in Plaintiff's Exhibit No. 26, which indicate that the Champlin Company had sold 838,405 barrels of crude oil during 1930, and the like sale of 595,431 barrels of crude oil during the first five months of 1931; that such entries were matters of bookkeeping only, and represented trades in oil in which a producer would exchange oil in one locality with Champlin, in exchange for oil produced by Champlin in another locality; in other words, the oil which such producer would take from his property is shown on the books of the Champlin Company as having been purchased, and the oil

produced by Champlin and delivered to such producer in exchange therefor as a sale; that the Champlin Refining [fol. 504] Company during the years 1930 and 1931, has not sold any crude oil it has produced in the Oklahoma City field to any person whomsoever, that in some one of the other fields a small volume of oil was exchanged with the Magnolia Company;

That a paper marked Plaintiff's Exhibit No. 32 is identified by the witness as a graph which compares Champlin's price for 39 gravity crude oil with the price posted by the Prairie Oil & Gas and Stanolind Companies from 1920 to 1931, inclusive; that the graph was prepared by Mr. Collier, under the supervision of the witness; that Plaintiff thereupon offers in evidence Exhibit No. 32, so identified, to which the Defendants object as incompetent, irrelevant and immaterial; which objection was overruled and the Defendants were granted an exception.

Cross-examination.

By Mr. German, of counsel for the defendants:

That the Champlin Company has posted a price for crude oil for a long time, which means that it offers to buy crude oil at the price so posted.

Witness excused.

That thereupon, Mr. Ramsey, of Counsel for the Plaintiff, offers in evidence certified copies of the Orders and Journal Entries of the Corporation Commission of the State of Oklahoma, beginning with Order No. 5189 of June 30th, 1930, down to date, all to be marked as Plaintiff's Exhibit No. 33; the Plaintiff also offers in evidence as Plaintiff's Exhibit No. 34, a true copy of the Petition of Otto Bradford, verified June 27th, 1931, by Ralph G. Thompson; and also offers in evidence Plaintiff's Exhibit No. 35, a certified copy of the Corporation Commission's Order No. 5448, of June 27th, 1931, based on the petition identified in Plaintiff's Exhibit No. 34; Plaintiff also offers in evidence a copy of the Corporation Commission's Order No. 847, identified as Plaintiff's Exhibit No. 36, that the copy so offered in evidence was not a certified copy, which

defect was waived by Mr. German of Counsel for the De-
[fol. 505] fendants, reserving an objection as to its competency, relevancy and materiality;

That Mr. Ramsey, of Counsel for the Plaintiff, then stated that he wished to offer five other Orders made along the latter part of 1914, and in 1915 and 1916, for the purpose of showing that the Corporation Commission was fixing the price of oil at the time the Act was passed, and in support of the offer, states that within the rule of statutory construction, the Court may review the history of the period of the time when the Act was passed, and therefrom ascertain the theory of the legislation.

Plaintiff thereupon offers in evidence Exhibit No. 37, being copy of the Order of the Corporation Commission, No. 846-A, undated, but appearing in the printed reports of the Commission and evidently made sometime in the latter part of 1914; and also offers in evidence Exhibit No. 38, being a copy of Order of the Corporation Commission, being Order No. 844, also undated, but evidently made in September 1914; and the Plaintiff also offers in evidence its Exhibit No. 39, being an Order of the Corporation Commission No. 846, dated September 22, 1914; Plaintiff also offers in evidence Exhibit No. 40, being a certified copy of findings of fact, opinion and Order of the Corporation Commission, No. 1022, dated February 18th, 1916; to the introduction of all of which, the Defendants object, for the reason that same are incompetent, irrelevant and immaterial;

That Judge Cotteral announced that

"We reserve an opinion about the Orders, but have concluded to allow them to go into the record for whatever they may be worth. At the present time we overrule the objection";

to which the Defendants except;

That the Plaintiff thereupon offers in evidence a certified transcript of the Petition for a Writ of Prohibition in the case of C. C. Julian Oil & Royalty Company v. Fred Cap-
[fol. 506] shaw, et als., in Cause No. 21,640, 145 Okla. 237, also 292 Pacific 841, filed in the Supreme Court of the State of Oklahoma on August 28th, 1930; together with all Exhibits attached thereto and the brief of Counsel for the Petitioner, which offer is made for the purpose of showing

that some of the issues raised here were not raised there; to which offer the Defendants object as incompetent, irrelevant and immaterial, upon which Judge Cotteral announced that it should

"go in under the same rule. We reserve our opinion for the present";

and again Mr. German takes an exception.

RAY M. COLLINS, recalled as a witness on behalf of the Plaintiff, further testified, in substance, as follows:

Redirect examination.

By Mr. Glasser of counsel for plaintiff:

That it is a matter of common knowledge that the witness is drawing $24,000.00 a year as Umpire, under the Proration arrangement; that if the members of the Corporation Commission do not have knowledge of such fact, they ought to know; inasmuch as it has been disclosed in some of the hearings before the Commission, including a hearing in the fall of 1930; whereupon, Judge Cotteral asked:

"Has there been any secret about it?"

to which the witness answered:

"No, sir; there has never been any secret as to who paid or the amount paid."

Witness excused.

ALVIN RICHARDS was thereupon called as a witness on behalf of the Plaintiff, and, after being duly sworn, testified, in substance, as follows:

Direct examination.

By Mr. Glasser, of counsel for the plaintiff:

That he lives in Tulsa, Oklahoma, is a lawyer by profes- [fol. 507] sion, connected with the Legal Department of the Pure Oil Company, and is chairman of the State-wide Proration Committee for Oklahoma; that the Pure Oil Com-

pany does not have any production in the Oklahoma City field, and has considerable production in the State of Texas;

Cross-examination.

By Mr. German, of counsel for the defendants:

That the witness has been chairman of the State-Wide Proration Committee since the last of October or November in 1930; that the other members of the Committee are:

Burdette Blue of the Indian Territory Illuminating Oil Co.;

Joe Sidwell of The Prairie Oil & Gas Company;

R. M. Young of The Carter Oil Company;

Wirt Franklin (of Wirt Franklin Company and the Franklin-Cromwell Company);

Mr. Filley of The Texas Company;

Mr. Nicholas of the Continental Oil Company; and

H. B. Fell of Ardmore, Oklahoma;

that the witness does not know absolutely which members of the Committee have production in the Oklahoma City pool or what companies do, but knows that The Prairie Oil & Gas Company has production there; that Wirt Franklin has a great deal of production there; that the Indian Territory Illuminating Oil Company has a great deal of production there; that Wirt Franklin has no production whatever in the Seminole field and that the Indian Territory Illuminating Oil Company has a tremendously lot more in the Oklahoma City field than in the Seminole; that C. C. Herndon of the Skelly Oil Company was the witness's predecessor as chairman of the State-Wide Proration Committee, and that Skelly Oil Company has larger production in the Oklahoma City field than it has in the Seminole area.

Witness excused.

J. H. Miley was thereupon called as a witness for the Plaintiff and, being first duly sworn, testified, in substance, as follows:

[fol.508] Direct examination.

By Mr. McKeever, of counsel for the plaintiff:

That the witness is a lawyer, a member of the firm of Miley, Hoffman, Williams & France, formerly Burford,

Miley, Hoffman & Burford; that the members of the firm of which the witness is a member, do not represent any oil company generally, but are employed by the Prairie Oil & Gas Company, by the Indian Territory Illuminating Oil & Gas Company, and by the Phillips Petroleum Company, at times, in special matters; that the witness was recently employed by the Standard Oil Company of Indiana in a suit brought under the Anti-trust Act in Ottawa County, Oklahoma;

Cross-examination.

By Mr. German, of counsel for the defendants:

That the witness's firm is also employed upon a per diem basis to represent the Oklahoma City Producers' Association in matters before the Corporation Commission, or before the Court, and that the witness is now appearing in this case at the invitation of the Attorney General, and any compensation will be paid by the Oklahoma City Producers' Association; that the Attorney General requested Mr. German and the witness to appear in this case and assist in the preparation and defense thereof on account of the fact that Mr. German had been connected with this matter from the beginning and had studied the law of the case very fully, and the witness does not know why he (the witness) was so invited; that the Oklahoma City Operators' Committee has at different times requested the witness to prepare petitions, present evidence for them in matters before the Corporation Commission; employment having originally been handled by Judge Burford and the witness having acted in that behalf since Judge Burford's recent death;

Witness excused.

Thereupon Mr. McKeever, of Counsel for Plaintiff, propounded certain questions to Mr. German, of Counsel for the Defendants, who stated that the State was not paying him for his appearance in the case, nor is anyone else and [fol. 509] that he did not expect any compensation.

Thereupon, Mr. Charles J. West announced that he would like to have permission to cross-examine Mr. Clifton, which request was granted by the Court.

R. L. CLIFTON, recalled for further cross-examination by Mr. Charles J. West, who stated that he

"represents the Governor of the State of Oklahoma, and for sixteen years has never been employed by an oil company";

that the witness thereupon stated that the Naden Well No. 1 is located on four town lots which equal in area approximately three-fourths of one acre; that the McCalep Well No. 1 is located on eight town lots; that the Seal Wells Nos. 1 and 2 are located on a five acre tract; that the witness was questioned as to markets, pipe lines and the use of railroads, concerning all of which he disclaimed any knowledge.

Witness excused.

Plaintiff rests.

Mr. Miley, of Counsel for the Defendants, thereupon offers in evidence Defendants' Exhibit No. 1, which is agreed to be a correct compilation by the Auditors of the Champlin Refining Company, of the crude oil production from each of the Champlin Wells, i.e.; the McCalep No. 1, Naden No. 1, and Seal Nos. 1 and 2, by periods; no objection by the Plaintiff.

[fol. 510] J. R. MCWILLIAMS was thereupon called as a witness upon behalf of the Defendants, and, after being first duly sworn, in substance, testified as follows:

Direct examination.

By Mr. German, of counsel for the defendants:

I live in Tulsa, Oklahoma. I am a petroleum engineer and hold that position with Skelly Oil Company. I have been with the Skelly Oil Company a little over six years. I have made a special study of the Oklahoma City field and the Seminole field.

(At this point counsel for the respective parties admit that the witness is a duly qualified petroleum engineer.)

Skelly Oil Company has and is operating 20 producing wells in the Oklahoma City field. It is drilling two addi-

tional wells in the said field. Its first well in said field was brought in about a year and half ago. Its wells in said field produce from the Wilcox, Green Shale, School [fol. 511] Land and Johnson sands or formations. The Green Shale sand is not known by any other name, that being its common name. It lies between the Wilcox and School Land sands, and generally if you are going to classify it with one or the other it would be called the School Land sand, but it has different characteristics and is a different sand.

In my opinion, water encroachment very seriously affects the ultimate recovery of oil due to the fact that the pressure in the reservoir is generally due entirely to the water pressure or hydraulic pressure, and the ability of the water to move through the sand. Let me explain it this way. Viscosity is the ability of a fluid to travel through a sand. If you had two tubes and through one of them you poured a quart of gasoline and the other a quart of molasses, the gasoline would travel through the tube much faster. Now water has the ability to travel through a sand faster than oil so long as the oil has no gas in solution with it, but if there is gas in solution with the oil, then the oil will travel through the sand easier than the water. If the well is opened wide open thereby permitting a hurried pressure at the bottom of the well and water is close to a nearby area and the well is drained of oil and the gas leaves solution with the oil, then the water has an opportunity to reach that well, and as we say, cone up into the well, and when that happens it gradually cones higher until it more or less leaves the oil in islands around the well, and when that happens it is very difficult, if not impossible, to bring that well back into oil production, so in my opinion, any flush oil field should be pinched back from the start in order to keep the gas in solution with the oil and to hold back water encroachment.

To whatever extent water encroachment operates to shut off oil, to that extent there is underground waste. In order to accomplish the best ultimate recovery from a pool, you [fol. 512] must take into consideration that nature has left the oil, gas and water in positions of relative weight. The gas being lighter is in the top of your structure; the oil being the next to the lightest is positioned below the gas, and the water being the heaviest is positioned below the oil. Oil has the ability to absorb great quantities of gas when

under pressure. You must take into consideration that the oil and gas are in a pocket because the water has flushed them up into this high point, and if you tap this reservoir with a series of wells, and then if you will take your oil out and gas sufficiently slow so your water encroaches symmetrically then you will materially increase your ultimate recovery. To operate your pools in that way would take a great length of time but we can approach it by at least pinching our fields back, and the more we pinch them back with due reference to efficient operation, the more we should increase our ultimate recovery. Oil and gas migrate in the formation whenever wells are drilled into it. The gas will migrate much greater distances than the oil because the viscosity of the gas is much less. The oil will migrate, but it only migrates because of the hydraulic water pressure, or because of the fact there can be drainage of both oil and gas from one tract of land through a well upon another. In order to accomplish the greatest ultimate recovery, each well should be operated at approximately the same percentage of its maximum capacity. If one well is allowed to operate at a higher per cent of its maximum capacity than another, the pressure around the bottom of that well will be lower than around other wells because of the quantity of oil and gas taken out. In other words, you take out a great volume of oil and gas, something must occupy that space of lowered resistance in the sand, consequently you create the lower pressure around the bottom of the well. If this condition continues, channels set up through the more porous areas of the sand which will extend considerable distances, and if the condition of one well operating at a great capacity [fol. 513] continues these channels will reach considerable distances. Now you must consider that each barrel of oil as it lies in place, wherever it is, has a certain amount of gas in solution with it, and that gas can never take a full hundred per cent of that oil to the well, consequently, the further distance this gas must move the oil the less that will arrive at the well. Therefore, two wells should not encroach upon one another's drainage area because a well that is operated at a greater capacity will attempt to drain oil from the other area, and that well could produce with the same amount of gas a higher percentage and the difference that is left in the sand in my opinion is underground waste. This results in the underground waste of oil which could have been re-

covered if both wells were operated at the same percentage of their capacity.

As definite illustration of drainage and migration in the Oklahoma City field, we have one case of an offset well that was drilling the sand, and our well was under production. In the drilling of this well they had what we call rotary mud which you pump down through a pipe and it washes the cuttings out of their drill. The weight of this rotary mud must be more than the pressure in the sand or the well would blow it out. While our well was operating we commenced to produce rotary mud and this well had produced 200,000 barrels of oil before this mud ever showed up, so we can assume that was not at the bottom at the start. We had operated it many months before we found this offset well was losing returns; that is, they were putting mud into the wells they were not taking out. In my opinion, that is definte evidence that that rotary mud traveled through the sand and produced through our wells. On the surface those wells are from 200 to 300 feet apart. These wells are not in the town lot section of the Oklahoma City field. The wells are on five acres each. It is possible [fol. 514] for these two holes to vary so much that they come together at the bottom, but there are several cases in the Oklahoma City field where this rotary mud shows up. I am of the opinion—those wells were closely spaced and possibly they came close together, but it shows definitely in my opinion that mud will travel through the sand. We have another definite case on one of our leases of the migration of oil and gas. We have one of our old wells producing a certain amount of oil, and the property located north of us is producing from the same sand, but that property in addition has two wells which are cased above a higher sand. In other words, there are two sands exposed in that well. This upper sand has the pressure of about three times the lower sand, and with the wells closed in, gas migrates. That is my deduction, migrated from the upper sand into the lower sand. While this re-pressuring operation was going on, the decline on our wells was quite rapid, even under proration. We brought it to the attention of these operators, this condition, and they voluntarily went in and stopped this re-pressuring action, and after a period of time, thirty to sixty days, something like that, our wells over night increased in production. They were flowing under the choke, and just to test out this phenome-

nal experience we opened these wells wide open and one of the wells made seven times the potential it had sixty days before. Another well made three times the potential it had sixty days before and that is very unusual for a well to increase in production. My picture is this higher pressure had driven the oil down slope below our wells and when the re-pressuring stopped it pushed it back up to our wells. In my opinion, that is evidence that oil and gas do migrate underground.

If the Oklahoma City field is not allowed to produce in excess of 250,000 to 300,000 barrels per day, and taking [fol. 515] into consideration only the area covered by the present producing wells, in my opinion the field will ultimately recover in the neighborhood of 320,000,000 barrels. That includes past recovery. Approximately 60,000,000 barrels of oil has already been recovered. This leaves an ultimate recovery of at least 260,000,000 barrels of oil in the Oklahoma City field if the field is operated in the manner which I have stated. The ultimate recovery from the Oklahoma City field in event proration were lifted and the field operated without proration can only be estimated because there are no decline curves in the Oklahoma City field, but in my opinion that field would produce 75 per cent as much oil if we opened the field wide open to production today and continued in that manner, thus leaving some 80,000,000 barrels of oil underground which could be recovered if we continued to operate under proration to not exceed 250,000 to 300,000 barrels per day. With proration we will get 80,000,000 barrels more oil than without proration.

If the Champlin wells were operated at five times the capacity of the adjoining wells, an excessive utilization of gas energy would result after a period of time. This would injure the neighboring wells in so far as the ultimate recovery of oil through them is concerned. It would operate to take gas out of solution with the oil in the neighboring wells.

I have not made a detailed study of the decline curve in the Seminole area, but in my opinion the Seminole area had produced 70 per cent of its ultimate recovery. That area has now produced in the neighborhood of 500,000,000 barrels of oil, and in my opinion there is something like 200,000,000 left yet to recover in the Greater Seminole area in wells now drilled. This is the opinion of others with

whom I have talked. They agree with that total estimate. Seminole is what we call a settled pool and it is not any ways near as important to prorate Seminole as it is Okla- [fol. 516] homa City because the pressures have been pretty well dissipated, so if the Seminole pool were thrown wide open to production I do not believe it would make any ways near as much difference as it is in the Oklahoma City area. I would say, however, as much difference; it would only reduce that by 12½ per cent. I would say that the estimated ultimate recovery from now on from the Seminole area under proration is approximately 200,000,000 barrels. I would say also that from the Oklahoma City field from now on under proration the estimated ultimate recovery is approximately 260,000,000 barrels. The present allowable production under proration in the Seminole area is about 175,000 barrels a day. I believe that the Oklahoma City field averaged about 185,000 barrels per day during the month of June. The present allowable in the Oklahoma City field today is 10 per cent of one-third of the potential. It is more than 185,000 barrels per day under the order of the Commission effective the last four days. Until four days ago, it was about 185,000 barrels. If the Seminole area and the Oklahoma City field are both operated from now on at the present rate of allowable production, they will recover the remaining recoverable oil in approximately the same time. The allowable production in the Seminole area of 50 per cent in certain of the pools composing that area amounts to something like sixty barrels per well per day. The present allowable production per well per day in the Oklahoma City field is about 250 barrels per well.

In order to reduce the potential of the wells in the Oklahoma City pool to a basis corresponding to the potentials in the Seminole area, the Oklahoma City pool would have to be operated until we get the head off the pool. That would probably take a year, but if you wish some sort of a comparison much better than what we have now on a four-hour basis, I think the Oklahoma City pool should be [fol. 517] opened up, all wells simultaneously for 30 days, and on the 31st day I would estimate that the Oklahoma City pool from present producing wells would produce 750,000 barrels. With an allowable of 200,000 barrels, that would amount to a percentage of somewhere between 25

and 30 per cent. If you wish to compare percentages, Seminole and Oklahoma City, that in my opinion would be a comparison. It is impossible to conduct any such proceeding in the Oklahoma City field on account of the high pressure and the productivity of the wells when operated for a period of 30 days, because you would have no place to put the oil and then it would be a very wasteful procedure because you would pull in the water and waste a considerable volume of gas. In my opinion, the best conservation program for the Oklahoma City field, that is, the amount which the field should be allowed to produce per day from now on from the present wells, judging by our wells, I would say the Commission should not allow us to produce from that area more than 250,000 to 300,000 barrels per day. I am speaking from the conservation standpoint, from my work as an engineer on those sort of subjects. There is evidence in our Wilcox sand of the mud traveling between wells. This is evidence that the oil is being drained and that the underground area is getting sort of gaseous. The mud can travel easier when that condition occurs. It is more important to keep those wells pinched back so as not to waste that gas.

Cross-examination.

By Mr. Ramsey, of counsel for the plaintiff:

I am a geologist. I function as an engineer in the production department of the Skelly Oil Company. I know something about geology. I have not made a particular study of that science. Skelly Oil Company has 20 wells in the Oklahoma City field, of which it has charge of the operation. I think there is another well in which it is a [fol. 518] part owner, and I believe it has some royalty interests in the Oklahoma City field. In addition to that, the company is now drilling two wells. I advised the company to drill those two wells because if it did not drill the same its properties would be drained. Other wells are already in next to these two wells. I believe one of these other wells belongs in Phillips Petroleum Company. Phillips Petroleum Company is represented on the Oklahoma City Operators' Committee. I believe the other of these two wells belong to Anderson-Pritchard. They are repre-

sented in the Oklahoma City Operators' Committee. There are more than 800 wells in the Oklahoma City field. The territory covered by the Greater Seminole field is at least 15 to 20 miles one way and 8 or 10 miles in another. I judge that the Greater Seminole field is at least ten times bigger than the Oklahoma City field. There are about 10,000 acres in the Oklahoma City field under production. It is my business, my profession, to estimate the most economical way of obtaining the greatest recovery of crude oil out of the ground. I think it would have been more economical to drill 400 wells in the Oklahoma City field than to drill 800 therein, but I don't believe we would have recovered as much oil. It is a question of whether you are looking at the economic or ultimate recovery. The question of whether 400 wells would recover as much oil at a good deal less expense than all these 800 wells depends on the price of crude oil. This is because if you drill two wells on a property you will get more oil than you would out of one. It depends on how much money you can get out of the oil whether you drill two wells or one. I would drill just as many wells as they would give me money to drill with and would pinch them back in. The wells in the Oklahoma City field cost from $140,000 to $150,000 each to drill. The first thing for an operator [fol. 519] to do is to get his money back, but he don't want to if he is going to leave his money in the ground. No man will drill an oil well unless he thinks he will get his money back. But I think the Oklahoma City field as a whole will pay out and make money. I think that the Oklahoma City field will make 320,000,000 barrels if prorated. I would judge to prorate, so far as back pressure is concerned, that the Oklahoma City field will be down to pretty well past its bulk of production in three years. The wells in the Oklahoma City field range from 6,500 to nearly 7,000 feet in depth. When the wells in that field get down to a production of about 150 barrels a day I don't believe the operator could afford to pay the lifting charge to take the oil out of the ground if the wells are producing appreciable quantities of water. If the wells are pure oil wells, I believe that he can. When a well is pinched back, the oil is not going to fly away. You must take into consideration the fact that there is a water pressure below this oil

and gas, holding them in the oil and gas sand, so there is no way for that oil and gas to get out of that reservoir; it is still there. The best scientific knowledge believes that there can't be any such thing as an absolute complete recovery of the oil particles from the sand in which the oil is found. That is impossible under present methods. When you pinch these wells in, you are pinching the gas back. I said that when we pinched in one of our wells, the mud passed from one to the other. We created a lower pressure around our well and mud and gas and oil, all three, entered the well. I think the Oklahoma City field is now approaching the point where we should stop allowing it more oil, but under the Corporation Commission's orders they were pinched back about 6%. Under the Commission's way of figuring percentages, I believe 12 per cent might be the maximum point for a time until the per- [fol. 520] centages get down because the potential will go down. The potential must be determined by each well. You cannot apply the same pinched back pressure to each well in a uniform manner throughout the field, and the Commission's orders do not force us to do that. They allow a certain monthly allowance of oil and the operator can elect any method he thinks best and efficient to product that oil. My own company has different methods of operating throughout the month. We have some wells which it is better to open for two hours so far as efficiency is concerned. We have other wells which we pinch steadily throughout the month. I know the approximate location of the Morgan well in the Oklahoma City field. I do not know that that well produced 28,000 barrels. I do not know the details of the Classen well, an offset to the Morgan well. I am not familiar with the Slick well, an offset to the Morgan well. I do not know that when the Morgan well came in, three wells had been drilled adjoining it, neither of which had produced over 3,000 barrels, and I do not know that the Morgan well came in at 28,000 barrels, but that could very easily happen because there are three or four different sands. In our case, we have a 3000-barrel well offsetting a 42,000-barrel well. Water has been discovered in the Wilcox sand. This occurred in the Bert well of the Phillips Petroleum Company in Section 10. It is producing water. There are wells in the Wilcox sand

in the south end of the field which are making water. I have had experience in oil fields since 1919. I have never known of producers pinching in their wells and keeping them pinched in as a practice where there was a good price for the oil. I think the policy in the past has always been to produce them at maximum capacity. To illustrate what I mean by the coning, if you will consider a wooden basin with a drain in the bottom of it and you had some water in the basin, and pulled the plug out, the water would [fol. 521] come toward the bottom of the basin. If you will turn that upside down and imagine the water in the sand in that well and the vacated space in your wooden bowl is the water coming up, you will get an example of coning. I know of no method by which water encroachment can be wholly prevented. I know that you can retard it. I do not know of any way by which water can be sealed off from the oil sand. My method for retarding water encroachment is by pinching back the wells and producing efficiently. This holds the water back and gives the oil time to reach the hole before the water does. The water presses only a portion of the oil into the hole. The gas must move most of the oil. There are a lot of oil wells which produce a lot of water and that keeps it up for years. I am quite convinced that every sand in the Oklahoma City field has water beneath it. This water is already a menace in certain portions of the field. I think that the water would take charge of the oil and leave a lot of it in the ground if we opened up the field.

Redirect examination.

By Mr. German, of counsel for the defendants:

I know of no way of estimating how much oil a well will produce unless you actually measure how much it does produce when it is wide open. That necessitates a wide open flow for the purpose of taking the potential. This puts every producer upon the same basis. Oil and gas are migratory. The question of whether while your well is shut in the oil and gas will move from your area to somebody else's area depends on how much volume of oil and gas is taken out of the other wells. We must consider the fact that gas occupies space as well as oil. If you allow a well

with a big gas volume to produce, then it makes a lower pressure area around that well. This is evidence of the oil and gas migrating into this gaseous area. I know it to be a fact that when an oil well starts making water, if you pinch it back it makes pipe line oil. By pipe line oil I [fol. 522] mean oil that has no water in it. When oil has water in it you have to treat it in order to make pipe line oil. Oil that has no water in it when originally produced, is pipe line oil to start with. If you pinch back the well so as to avoid the production of water you can recover your oil without the water. This operates to hold the water down beneath the oil when you do that. That is the only conclusion you can come to if you produce water. If you pinch it back and you don't produce water you must have stopped the coning. If you should operate the oil well so as to produce water, the coning will take place, and underground waste would result because there is a certain amount of oil between this particular well and the one up slope that the lower well can recover, and the well up slope can't recover as it goes by, so you must take into consideration that your wells on the edge of the pool gradually go to water up slope.

Witness excused.

Thereupon both parties agreed that there should be filed as an exhibit in this case, the abstract and counter-abstract of evidence before the Corporation Commission at the October, 1930, hearing relative to the subject of waste, which abstract was prepared for the use of this court at the hearing in January, 1931, on the application for an interlocutory injunction, with the understanding, however, that same should constitute a statement of the evidence before the Commission upon the subject of waste on which it acted, but that the same should not be considered as primary evidence in this case. Said abstract and counter-abstract is incorporated as the second document in Volume 4 of Exhibits, which volume is entitled "Abstract of Defendants' Exhibits."

[fol. 523] E. F. GUIDINGER was thereupon called as a witness for the Defendants, and, after being first duly sworn, in substance, testified upon direct examination as follows:

Direct examination.

By Mr. German, of counsel for defendants:

I reside at Bartlesville, Oklahoma. I am the chief engineer for the Phillips Petroleum Company. I have been connected with oil companies since 1912, and with the Phillips Company for the last six years. I am a petroleum engineer, and that is my special line of work. I have been doing that particular line of work for the past six years with the exception of about one year acting as purchasing agent for the company. I have a degree in engineering, but not in petroleum engineering, from the University of Nebraska. I have made a special study of the Oklahoma City pool. Phillips Petroleum Company has 47 completed wells in the Oklahoma City field which it manages, and an interest in 24 additional wells in said field. The Phillips Company completed its first well in said field about July, 1930. The Phillips Company has seven wells offsetting eight wells belonging to the Champlin Refining Company in said field. If the Champlin wells should be operated at five times the percentage of their potential, while the wells of the Phillips Company were operated of their potential, there would be drainage from the area where the wells of the Phillips Company are located. There would also be a reduction in the pressure and gas energy at and about the wells of the Phillips Company. This would affect the Phillips' wells because the gas itself in the oil that is located under the Phillips wells would migrate towards the wells which are being produced at a much higher rate than the Phillips wells, carrying some oil with it to the other wells, and leaving oil under the Phillips wells which would not be left in condition to move finally to the Phillips wells. This is because of the fact that it would take gas energy away from the Phillips [fol. 524] wells. It would change the condition of the oil that was left under the Phillips wells, and besides the gas that was originally present in the oil under the Phillips wells would have moved off to the nearby wells. This would affect the recoverable oil at the Phillips wells. The effect would be that the Phillips wells would not produce naturally as long as they would otherwise. It means that the Phillips wells would have to be operated artificially sooner than they would otherwise. Besides, there would be

a certain amount of oil left in the reservoir than would normally otherwise move towards the Phillips wells. It would reduce the recovery from the Phillips wells by natural flow to some considerable extent. There is no way of determining the extent of the injury to the Phillips wells, that is, no way to calculate it exactly. I do not believe that it could be approximated with any particular certainty. I am sure there would be a great change in the amount of recoverable oil, but as to calculating it or even approximating it, I do not believe it is possible. We have cases in this country of drainage from drilling an offset well on which recovery is had. I understand that there is some rule set up whereby where a man on a lease fails to drill an offset well and breaches his implied covenant and suit follows for breach of that covenant, recovery is had on account of loss or drainage, but I am speaking from an engineering standpoint. I believe it is impossible to calculate. Where the reservoir conditions are the same there would be no difference in the Oklahoma City field from the ordinary case of drainage. You will have to use artificial means for producing oil from your wells much sooner than you otherwise would. The artificial means which I refer to would in all probability be the use first of the gas-air lift method. That is a method of making a well produce efficiently. That is accomplished by introducing gas into the well, putting the tubing into the well and introducing gas into the well and [fol. 525] thereby lifting the oil. There are other methods after the gas energy is diminished substantially or depleted by which you can draw the oil to the bottom of the hole. The gas lift method simply produces the oil that comes to the bottom of the hole without the aid of any artificial means. I think we can say certainly that the cost of producing oil with the gas lift method will run from 10¢ to 20¢ a barrel, depending on different wells, and depending on different stages in the life of the wells. This includes the cost of the gas lift equipment. In my opinion the operation of the Champlin wells in the way I have mentioned would result in underground waste. The reason for this is because I think generally it will leave quite a considerable amount of oil in the reservoir that can never be recovered, but that could be recovered under proper operating conditions. I think the best method to operate the wells in this field is to have the wells produce under a restricted rate of

flow under the same percentage of their potential capacity. I have an opinion as to how much oil ought to be produced from the Oklahoma City field, as to what the limitations, if any, on it should be from the present wells in order to accomplish the greatest ultimate recovery of oil from the pool. I believe that the maximum rate permitted under any condition should not be to exceed 250,000 to 300,000 barrels. The question of what per cent a well ought to be operated continuously to get the best results, depends on the well.

By Kennamer, J.:

"Q. What percent do you say a well ought to be operated continuously to get the best results?

A. That depends on the well.

Q. I am talking about a well say of three thousand or four thousand barrels per day, what per cent would you say that ought to be operated daily to get the best results?

A. Continuously for 24 hours per day?

Q. Yes, just regularly operated?

[fol. 526] A. It should be operated in my opinion at a rate to bring the oil to the top of the home with a minimum of gas.

Q. What per cent of the potential production to give the best results in the interests of conservation?

A. Taking into account all factors?

Q. You say you are familiar with the Oklahoma City field. Let's just apply it to the conditions as you know them down there?

A. Well, I think there is a range of percentage through which a field could be produced.

Q. I am wanting your best judgment as to the best per cent in the interest of conservation without underground or physical waste?

A. Well, I think a very low rate in the interests of conservation.

Q. What rate do you say?

A. Tow or three per cent."

If proration were lifted in the Oklahoma City field there would be a large waste, a large immediate waste, and a large underground waste, in my opinion. I think the difference between the ultimate recovery in the one case and

the other might be from 25 to 35 per cent less under wide open conditions than under pinched conditions.

Cross-examination.

By Mr. Glasser, of counsel for plaintiff:

I have never known of any operator in any field anywhere prior to proration in Oklahoma operating his wells on 2 or 3 per cent of its production. I do not give any consideration to the market demand and the price of oil in making that answer. The answer that I gave Judge Kennamer is predicated entirely on conservation. The factor on which I predicated my answer was conversation. By conservation I mean the prevention of the waste of two things. I mean the prevention of the waste of oil and the waste of gas. I assume that the waste in oil will occur that always occurs in a flush field that operates without restraint. I assume that gas waste is going to occur, and is [fol. 527] always going to occur in flush fields without restraint. The waste that would occur at ten per cent reduction as against two per cent relatively speaking, would be considerably greater. It would not be as great as wide open. Under fifty per cent reduction, the waste would be very much greater; as great as wide open probably. It is my opinion that the greatest volume of oil could be recovered in the Oklahoma City field operating the well on two or three per cent of their potential, assuming that the potentials as they are at present. As the potentials change your percentages may well change. There is nothing wrong with the potentials as they are at present. They are all right. There is no factor in that. There is a change in the reservoir as you produce from it. What might be an efficient condition now might not be an efficient condition later on. In my opinion the Wilcox sand wells in the Oklahoma City field can be operated as efficiently at two to three per cent of the potential as under any other rate. In my opinion, the operation of these wells at two to three per cent of the potential will recover the greatest volume of oil. I predicate this experience in this field already and on our experience in the Seminole field. No other field has ever been produced on that low a rate and we have no pre-

vious experience in the industry. Our rate in the Oklahoma City field is two per cent a day. The waste in the Oklahoma City field warrants that because under our experience in the Oklahoma City field we found while we are allowed what amounts to two per cent of the potentials of a well per day for thirty days, we can produce that oil at a rate which gives us the greatest efficiency for that particular well. We have our own experience that warrants that conclusion. This experience is that while a well has a gas-oil ratio of 1100, we can bring it down to 500 under pinched conditions. As to how low the percentage should be to most efficiently operate, it may be at the point which brings about the most efficient operation. In some cases it [fol. 528] may be two and in some cases higher. In my opinion the lowest efficient gas-oil ratio in any sand is the lowest ratio. In some cases we have found it be around 500 cu. ft. per barrel. This is a good minimum on the wells we worked on. It might not be on other wells. I think it is a good minimum on the wells I know about. I have heard of lower minimums on other wells, but I do not know about that. In my opinion the most efficient, lowest minimum in the Oklahoma City field of which I have personal knowledge is 450. I don't know as I am able to say how high you can go before you get out of line and are commencing waste. In my opinion four or five thousand cubic feet per barrel wouldn't be extremely wasteful. If you produce a well at two or three per cent you are able to produce it under its best gas-oil ratio, and you will also give the reservoir a chance to let the water follow the oil up and get the most efficient extraction of oil from the reservoir. In my opinion, the well should be operated at the lowest gas-oil ratio. There is no difference in operating a well on a gas-oil ratio up to a great per cent of its possible production and still maintain that ratio, not so far as that well is concerned. There wouldn't be any loss except that you would be taking more oil out of that well than out of the surrounding wells. If you maintain a proper gas-oil ratio, the percentage might come up to different amounts; I can't say. I heard Mr. Arnold testify that it ranged from 33 per cent to 66. I think he is in error in that. I would cut his estimate down one-third to one-half of what he said, if you maintain your gas-oil ratio. I know of things which prevent you from maintaining a

proper gas-oil ratio. You have to maintain the proper flowing rate in order to get the proper ratio. It is not a mere matter of mechanics to change the rate of flowing. The manner in which the casing is set and the manner in which the tubing is inserted has something to do with that. It is possible to lower the gas-oil ratio considerably if [fol. 529] everything is done in a proper manner. In so far as actual production is concerned you can control gas-oil ratio with the proper sort of engineering practice. I am fairly familiar with the Morgan well in the Oklahoma City field. I have been in the oil business since 1912. I know that oftentimes a good well is produced which is offset on four sides by dry holes. I have seen that happen. I also know that dry holes are sometimes offset with good wells. These facts would not in any wise alter my opinion that the Champlin wells might seriously affect the Phillips Company's wells, because we do not have those conditions in the Oklahoma City field, that is, not that I know of except near the edge of the field. In saying that these things do not happen in this field, I mean that where our sand is present our production is fairly regular. As a rule we do not have a low production well in the Oklahoma City field in the same sand as an offset well with great production.

"Q. Well, what about the sands of the wells illustrated on the chart?

A. You are talking about the Morgan well, 28,000 barrels?

Q. Do you remember which of these wells came in first?

A. No, sir.

Q. Assuming that the Classen well on the tract marked B came first.

A. Yes, sir.

Q. At three thousand barrels. Now referring to the Slick well down in the block marked No. 10.

A. Yes, sir.

Q. And then the well immediately east marked No. 3.

A. Yes, sir.

Q. Now assuming those three wells came in, the Classen well came in at 3,000 barrels; the Slick well at five, and the well east of the Slick at 2500; and some five months elapsed, and then the Morgan well drilled as an offset well to the

Classen that came in, 250 feet away, came in at 28,000 barrels. What do you say about that?

[fol. 530] A. Because it is 250 feet away on top of the ground—there is no telling where the bottom of the Morgan well is. The Morgan is probably producing in the Wilcox sand some distance west of the top of the hole.

Q. Assuming both wells are in the same sand and the beds dip to the west what would you say, how do you account for the fact that a well 250 feet away makes five times as much oil?

A. I couldn't account for that in Oklahoma City if they are in the same sand.

Q. Nine times as much oil.

A. I am frank to tell you I don't believe they are.

Q. Concern yourself with the supposition that they are in the same sand. Now if they are in the same sand and if they are about 250 feet apart, how do you account for that situation in the Oklahoma City field under your testimony?

A. I couldn't account for it.

Q. It couldn't be true if they are in the same sand.

A. It is true with this exception. Of course, the Morgan has not taken any official potential, and this figure of 28,000 barrels is more or less speculative. I know it is a good well.

Q. It is a better well than the Classen?

A. Yes, sir.

Q. How do you account for the fact it is so much better well only 250 feet away?

A. I have told you I am sure the Morgan well is not producing from the same sand as the other well. It couldn't make that amount of production in the same sand.

Q. If the two wells are in the same sand, if they are producing from the same zone, there isn't any way to account for what happened on the basis of your testimony is there?

A. That is true."

Redirect examination.

By Mr. German, of counsel for defendants:

If the Morgan well and the Classen well are in the same sand and if they are producing from the same zone, that is a very unusual occurrence. I do not believe we have ever

[fol. 531] had this percentage, ratable-taking method, enforced by the Corporation Commission in Oklahoma prior to the time when present series of orders was commenced in the Seminole pool. It is a fact, although, some operators in any pool and even a majority of them, might desire to operate their wells on a low percentage of potential production, that in the absence of state control to compel all of them to do it, that some operators just won't do such a thing unless forced to do so, and this compels all the balance to open at a wider rate. There are other factors which enter into the determination of the most efficient gas-oil ratio than merely the amount of oil and gas that comes out of the well. The size of the casing and the conditions of operations on top of the hole for a certain sized conductor string, a certain sized johnny brings about the best results. As to conditions down in the formation such as nearness or distance to water and position of the well on the structure, the well lower down on structure is generally more deficient in gas; less gas is present than in a well higher up. The nearer to the water contact, the less gas per barrel usually present. There are some wells in the Oklahoma City field that have no variation or practically no variation in oil-gas ratio whether operated wide open or pinched in. As a rule every well is a problem of its own.

Recross-examination.

By Mr. Glasser, of counsel for plaintiff:

The potential of the Morgan well was speculative the last I heard of it. If there has been an official potential taken, I don't know about it. All the potentials, as they are being taken, are not speculative. There is a member of my company on the Operators' Committee in the Oklahoma City area. I am the man. Any adjustments given to any operator in the Oklahoma City field have to be brought be-[fol. 532] fore the Committee. It is discussed before the Committee and a vote is taken on it. I have one of those votes. Mr. Stokes of the Slick interests is Chairman. Mr. Briggs of the Coline, Mr. Wirt Franklin. This is the Oklahoma City Operators' Committee, handling matters of proration or rather advising in them. The other committee testified about was a committee of the Oklahoma City Producers Association. Mr. J. K. Schafer is a member of the

Oklahoma City Producers' Committee. There are two more members. I don't remember them right now. As I understand it, the Oklahoma City Operators' Committtee under some proration order was to be selected by the producers in open meeting to handle the affairs of the Umpire's office, or rather to advise with the Umpire on special cases. We do not tell the Umpire what to do. He knows what to do, but any special case that is brought to him he brings before the Committee. He has to have our okay on special cases. We did not okay this two per cent production. We did not recommend it to the Commission. That is decided on open hearing before the Corporation Commission. We do not furnish the witnesses the evidence to show that is the best conservation proposition to the Corporation Commission. The testimony before the Corporation Commission is to determine the market outlet as I understand and to allocate. It is their business to find out what the market is. This committee considers these special cases and makes recommendations to the Umpire. It is my understanding that this committee is appointed by the Corporation Commission to act in an advisory capacity.

Opinions differ as to the best practice as to size of casing that should be set on a sand. The best practice in the industry is 7" casing. My company is setting seven-inch casing on most wells. We are setting some nine and five-eighths-inch too. We are not getting a hundred thousand [fol. 533] barrels doing it. We have not got a hundred thousand barrels yet. We have what we believe to be the biggest well in the field, in the well in which we set nine and five-eighths-inch casing. We have in the past developed a special motor driven centrifugal pump which is run to the bottom of the oil well with an electric cable clamp along-side the tubing. Those pumps increase in their efficiency as the diameter in the propeller increases, and we set large sized casing to be able to run as large sized pump as possible. This pump will not work nearly as efficiently in a seven-inch casing.

Witness excused.

H. M. STALCUP, being called as a witness for the Defendants, after being first duly sworn, in substance testified as follows:

Direct examination.

By Mr. German, of counsel for defendants:

I was on the stand before. I am the vice-president in charge of production for the Skelly Oil Company. The percentage of allowable production in the Yates pool in Texas is 1.3%. In the Hobbs pool in New Mexico it is approximately 3%. I forget the exact decimal. The potential in the Hobbs pool is about 1,325,000 barrels with a 37,000-barrel a day outlet. The potential in the Yates pool in Texas is 5,496,000 barrels with 70,000 barrels a day outlet. Skelly Oil Company has production in both the Yates and the Hobbs pools. In barrels of oil produced per day the Oklahoma City field is not exceeded by any pool in the United States. It produces in barrels of oil per day more than any other single pool in the United States. At the [fol. 534] present time the East Texas field as a field is composed of several pools. The East Texas field as a whole, produces approximately three hundred twenty odd thousand barrels of oil a day. There are three pools in the East Texas field.

Cross-examination.

By Mr. Glasser, of counsel for plaintiff:

The information respecting the number of pools in the East Texas field is carried as I have given it in the Oil and Gas Journal; the Bureau of Mines compilations and the American Petroleum Institute compilations. The Oil and Gas Journal carries the East Texas field under three separate pools. It is carried as Kilgore, Lathrop and Joyner. It is generally conceded to be one entire field divided into three pools at the moment. I could not tell you the percentage in the East Texas field. That is not where most of the oil in Texas is at the present time. The Yates field in Texas probably has ten times as much as the East Texas field. What I understand is meant by the East Texas field is the area that is considered as proven for production in

some three counties, approximately 100,000 acres. It is my information that the area of the East Texas field approximates 100,000 acres. Different estimates vary from 90 to 120 thousand acres. I do not think that the Yates estimated reserve is ten times as much as the East Texas area. I am talking about present production. I am not talking about estimated ultimate recovery, but present producing wells. My understanding of the present production in the East Texas field daily is some seven or eight hundred thousand barrels a day potential. Its production is 325,000 barrels a day. I did not say that Yates is ten times that much. I said that Yates had a potential capacity approximately ten [fol. 535] times that of the East Texas field. Something like 700,000 barrels will cover the estimated production of the East Texas field of the wells now completed. Of the wells now completed in the Yates pool, the gauge potential is five and one-half million. The figures in actual production for Yates is 70,000 barrels a day, and for East Texas about 320,000 barrels a day. The Yates field is on proration, and has been for four years. It is voluntary proration. Hobbs is also voluntary proration. The Yates field is under the orders of the Railroad Commission of Texas, but proration was originally entered into in that field under a voluntary arrangement. The Hobbs field in New Mexico was a voluntary arrangement between the state and the operators approved by the state. I am personally acquainted with the Yates pool. There is water showing up in quite a few wells around the outer fringes of that pool. The water is not getting up. It would if they would increase the rate of production from the field very much. I do not think that the Yates pool is being produced now at capacity. I know it isn't. I think if they continue to operate that pool as it has been for the last four years it will probably excel in the recovery of oil that has ever been had to date in percentage of possible recovery. As to the best the Yates field could possibly do without any proration and wide open, that would depend on how many days you mean wide open. A structure badly underlaid with water like that is, you could not leave it wide open very long without producing a lot of water. I do not know what the Yates pool would produce if the proration were removed and it was allowed to produce the most it could produce. There is something like 14,000 acres in the Yates pool. The pool

is owned by some seventeen operators. They are: the Mid-Kansas, a subsidiary of the Ohio Oil Company; the Continental Oil Company; the California company, subsidiary to the Standard of California; the Simms Oil Company; the Stanolind-Continental; Humble Oil & Refining Company; Shell Petroleum Company; Stanolind Oil & Gas Company; the Savoy Oil Company; Kirby-Elson Oil Com- [fol. 536] pany; Phillips Petroleum Company; Kirby Petroleum Company; Crosby and others; Graburg Oil Company, Plymouth Oil Company; and Skelly Oil Company. The Yates pool is prorated by mutual consent of the operators under orders of the Railroad Commission of Texas. The operators in that field got the Railroad Commission to make that order.

Witness excused.

HOMER H. CHARLES, thereupon called as a witness for the Defendants and after being first duly sworn, testified in substance as follows:

Direct examination.

By Mr. Miley, of counsel for defendants:

My name is Homer H. Charles. I live in Bartlesville, Oklahoma. I am a geologist by profession. I attended the University of Kansas for five years and received the degrees of Bachelor of Science and Master of Science. I have practiced my profession for eight years. I am connected with the Indian Territory Illuminating Oil Company. I have worked at my profession in the Oklahoma City Field. I am acquainted with the Champlin McCalep Well No. 1, located in Roosevelt Place Addition to the City of Oklahoma City, Oklahoma. I know the sand that well is producing from. I am able to compute the amount of oil any place in a given oil and gas sand with certain known factors. I have computed the amount of oil and gas in the vicinity of the Champlin McCalep Well No. 1. I estimate the recoverable oil as approximately 33,000 barrels per acre. I have made a similar computation with reference to the Champlin Naden Well No. 1. I estimate it to be 27,000 barrels per acre. I have made a similar computation with reference to

the Seal lease in Compton Park. From No. 1 on the Seal lease, I estimate the recovery to be approximately 13,000 barrels per acre. From No. 2 on said lease approximately 7,500 barrels per acre. This is based on a study of the sands in those wells. I would not say that every well would be the same.

[fol. 537] Cross-examination.

By Mr. Glasser, of counsel for plaintiff:

In case of a dry hole, you might get a 33,000-barrel well on one acre, and no oil on an adjoining acre. I am somewhat familiar with the area around the Morgan well.

The witness being handed a chart by counsel for Plaintiff, testified further on cross-examination:

According to our records (meaning geological records) the Classen well (shown on the chart) did not get any Wilcox sand. We use these geological records for all of our determinations. I presume that the Plains Petroleum Company well in block 7, Alexander Block (shown on the chart) came in in the Wilcox sand. The wells right across the street came in also in the Wilcox sand. The No. 4 well in block 6 and the Plains Petroleum Company well in block 7, just across the street from each other, one having come in as a 60,000 barrel well and the other as a 40,000 barrel well are both in the same sand, and I can give you another example. * * * (Witness was interrupted at this point by counsel for Plaintiff who stated that he did not care about another example.)

Resuming his testimony upon cross-examination, the witness further testified:

As to the ultimate recovery of these two wells (meaning the No. 4 in block 6 and the Plains Petroleum Company well in block 7) I should judge that the Plains well would not recover as much oil by a considerable amount as the No. 4 well in block 6. If you only got 33,000 barrels to the acre in one day out of the one that came in at 40,000 (meaning the Plains Petroleum Company well) you would not get that much out of the other well (meaning the No. 4 well in block 6). It depends altogether on the sand conditions—on the way the well is operated. If both wells were operated iden-

tically, one with just as good practice as the other, there would be a variation in the recovery. I should say that the average computations the geologists and petroleum engi- [fol. 538] neers make on a per-acre basis are often quite close to the ultimate records. The figures which I gave as to the amount of recoverable oil from these respective wells is based upon the thickness of the sand and the porosity at the particular place of these wells, and these figures are not meant to reflect a general average of the sand over the whole field.

Witness excused.

D. B. Dow was thereupon called as a witness for the Defendants and, being first duly sworn, testified in substance as follows:

Direct examination.

By Mr. Miley, of counsel for defendants:

My name is D. B. Dow. I live in Bartlesville, Oklahoma. I am a petroleum engineer. I am a graduate of the University of Nebraska with a Master of Science degree. I have practiced my profession about 13 years. I am connected with the Indian Territory Illuminating Oil Company. I am familiar with the Oklahoma City field. I have made a study with reference to the casinghead gas situation in the Oklahoma City field. My study has continued since the field was discovered. Casinghead gas is gas that is produced from an oil well together with the oil. The casinghead gas from the Oklahoma City field has a commercial or useful value, for the manufacture of gasoline and the use of the residue gas as fuel. The casinghead gas is utilized for the manufacture of gasoline by passing it through a gasoline plant where the gasoline vapors carried by casinghead gas are extracted from the gas. These plants are expensive. In the Oklahoma City field there is now being produced approximately 437,000,000 feet of casinghead gas per day, approximately all of which is taken by the gasoline plants. I know the casinghead gasoline plants in the field. I know the capacity of these plants approximately. The oil wells in the Oklahoma City field are not operated continuously at a uniform rate. There are

[fol. 539] times when there is a greater production of casinghead gas than there is at other times during the day. That is true also during the month. The present casinghead gas plants in the Oklahoma City field are capable of taking care of the peak load of gas that is now being produced in that field, substantially. Practically all of the gas in the Oklahoma City field is now being utilized for the manufacture of gasoline. The content of the gas per M. cu. ft. is approximately one-half gallon per thousand cubic feet. I know how many gallons of gasoline are manufactured in the course of 24 hours. On the basis of 437,000,000 feet, that would amount to 218,000 gallons. That has commercial value. The selling price is approximately one and one-half cent per gallon at the present time. The other product from the gasoline plants is residue gas. That is the residue gas or gas remnant. That is useful and is used for fuel for domestic consumption. The gas companies buy that gas in the Oklahoma City field. The requirements for residue gas vary with the period of the year. In the winter time more gas is taken and in the summer time less, but on a yearly average approximately a hundred million feet a day is taken. I would say that the value of that gas is six cents a thousand. I have made a calculation to estimate the amount of casinghead gas that would be produced the first day if the present restricted production in Oklahoma City were lifted and the field permitted to produce to its limit. It would be 7,500,000,000 cubic feet. The gasoline plants are not able to take care of that much. This would decline as time went on. I have calculated how much would be produced in a year. I calculate that 3,300,000 gallons of gasoline would be wasted with the gas that could not be handled in the gasoline plants the first day. That is the amount which the present plants would not be able to take care of. It would be difficult to estimate how much gas would be produced at the end of the year, the last day of the year, but I [fol. 540] would assume approximately the same amount of gas would be produced at the end of a year and under present operation approximately the same as we are producing now under present proration. There is no likelihood of additional plants being erected to take care of the excess amount that would be produced if the present proration should be lifted and an unrestricted amount of oil could be produced. The present price of gasoline certainly would

not encourage anyone to build plants in the first place, and in the second place, if he should build a plant, the plant would necessarily have to be paid for in the first year's operation because at the end of the year that plant would not be needed; any additional plants would not be needed. That is not practicable under the existing prices of gasoline and the cost of gas. I did not say that at the end of the year there would be as much production of gas under an unrestricted condition as there would be the first day proration was lifted. I meant to say that at the end of the year, the production of casinghead gas and gasoline would be practically the same as it is right now under proration, assuming that this year there was no proration throughout this year. During the first year I have calculated that 248,500,000,000 cubic feet of gas would be wasted at the wells in the field that could not be utilized by the plants. 123,250,000 gallons of gasoline could be recovered from that gas if it was properly utilized. The value of that gasoline, at present prices, would be $1,848,750.00. I have not made a calculation as to the value of the residue gas alone. I have a total figure, including the gas wasted at the discharge of the plants, together with the gas wasted in the field, at six and one-half cents a thousand, amounting to $29,400,000.00. The total value of gas and gasoline wasted during the year would be $29,400,000.00. There are nine gasoline plants in the Oklahoma City field at the present time. We know that under our present operating condition they can handle prac-
[fol. 541] tically all the casinghead gas produced. If the field would be wide open and gas delivered at a little more uniform rate than at the present time they would naturally handle more gas. If there is any material increase in the amount of gas from the casinghead gas from the field, these plants would be unable to take care of it and that would be waste. These plants are not running twenty-four hours a day and thirty days a month. They operate about 50% of the time.

Cross-examination.

By Mr. Glasser, of counsel for plaintiff:

I think my calculations are probably a little low. The producer is paid a fraction of a cent per thousand cubic feet for the gas with the gasoline in it.

Witness excused.

Thereupon Mr. Miley, of Counsel for the Defendants, offers in evidence Defendants' Exhibits X, Y and Z, being the tabulation of gauges of potentials of wells in the Oklahoma City field for January and April under the Commission's Orders; Exhibit X being the potentials as calculated by the multiplication of the four hour gauge by the figure 6, Exhibit Y being the summary of that total showing by Companies, and Exhibit Z being the list of wells which have not taken any potential either for January or April; that the Plaintiff objects to the introduction of the document for the reason that the same is incompetent, irrelevant and immaterial, which objection is overruled, to which the Plaintiff is granted an exception; that thereupon, the Plaintiff offers a document which is identified as Plaintiff's Exhibit No. 43, being a statement of the April overs and unders for the Oklahoma City field, which document is offered in evidence in complement of the Exhibits X, Y and Z offered by the Defendants, to which the Defendants object as incompetent, irrelevant and immaterial, which objection [fol. 542] is overruled, to which the Defendants are granted an exception.

The Defendants rest.

R. L. Clifton, recalled by the Plaintiff in rebuttal, in substance testified as follows:

Direct examination.

By Mr. Glasser, of counsel for plaintiff:

That a paper which has been marked as Plaintiff's Exhibit No. 42, is identified as a plat showing a portion of the Northwest Quarter (NW¼) of Section Two (2), Township Eleven (11), North, Range Three (3) West, in Oklahoma County, Oklahoma; that it accurately sets forth that which it purports to reveal, and was prepared by the witness with the assistance of draftsmen in his office; that said plat purports to show the area in and around Morgan Petroleum Company Stout Well No. 1;

That Slick Classen Well No. 1, in Block B, the Morgan Petroleum Company Stout Well No. 1, the Slick Daugherty Well No. 1 in Block 10, and the Plains Petroleum Well No. 1 (Alexander) in Block 7, indicated upon the chart,

are all drilled into and producing from the identical sand; that the witness saw samples of the sand, watched the drilling of the wells, and is able to identify these samples as belonging to certain beds in the Simpson formation;

That Plaintiff's Exhibit No. 42 was offered in evidence as a part of the direct examination of this witness in re-
[fol. 543] buttal, without objection upon the part of Defendants;

Cross-examination.

By Mr. German, of counsel for the defendants:

That the witness felt sure that the samples which he had examined had been taken from the wells indicated upon the chart; that the Wilcox sand was penetrated in the Morgan Stout Well No. 1; the Slick Classen No. 1, the Slick Daugherty No. 1, the Slick Danreuther No. 3, and Plains Petroleum Alexander No. 1; that all of said wells were in the basal portion of the Wilcox, and all drilled into the School Land sand below the Wilcox; that all of the wells were cased in the top of the Simpson; that the Wilcox is an upper member of the Simpson formation; that the witness would not say that all of the above described wells are cased on top of the formation into which they were drilled and from which they produce oil; because having been drilled through some Pennsylvania beds that must have carried more oil than gas;

That the Morgan Stout Well No. 1 ran wild for four days, i. e., with an uncontrollable flow into the open air; but the other wells did not run wild; that there is a theory that when a well so flows channels are set up in the sand immediately adjacent thereto; with this theory, however, the witness does not agree;

That such flow in a well beyond control, as against its offset well that is within control, does not necessarily result in any material ultimate difference in the behavior of such wells; and in support of the witness's theory, the Slick Daugherty Well No. 1 to the south of the Morgan Stout Well No. 1, was cited for the purpose of showing that the original potential of that well, of 175 barrels per hour, had increased to something like 20,000 barrels per day, notwithstanding such well had never been out of control; that some work had been done on this well, but that the witness

was not sure as to whether it had been killed and then re-conditioned;

Witness excused.

[fol. 544] CHARLES C. PEPPERS, thereupon called as a witness in rebuttal by the Plaintiff, being duly sworn, testified in substance as follows:

Direct examination.

By Mr. Glasser, of counsel for plaintiff:

That he lives at Enid, Oklahoma; is a manufacturer of natural gasoline; engaged in the business for fifteen years; that gas is being very unevenly produced in the Oklahoma City field and that at times the production of casinghead gas is 25 to 30 per cent. more than the capacity of the plants in the field; that at other times there is barely sufficient gas to operate a plant upon the smallest possible ratio to which the plant can be reduced; that in the daytime nearly all of the operators produce their wells; that the intermittent production of such wells results in a waste of gas which could be remedied by a uniform system of operation, which would produce an even amount of gas over a 24 hour period; that if a proper gas-oil ratio was maintained in the production of said wells, all of the gas so produced in the Oklahoma City field would, as far as practicable, be properly utilized for the manufacture of natural gasoline; that it has never been the custom in the industry for the manufacturers of natural gasoline or for the producers who build their own plant to put in plants up to maximum capacity equal to the total volume of gas produced, for the reason that flush production produces a volume of gas which is not sustained and does not warrant the construction of manufacturing plants equivalent thereto; that the industry would find a way of taking care of and manufacturing the casinghead gas produced in any field if produced upon a proper ratio with the volume of oil taken therefrom; that when asked whether the witness had ever heard of any field in the United States where the industry allowed casinghead gas to be wasted as the young man from Bartlesville had computed; the witness stated that those figures are so unreasonably fictitious that the witness could not conceive of them.

[fol. 545] Cross-examination.

By Mr. Miley, of counsel for defendants:

That the witness did not know about the operations in the Panhandle of Texas; that Counsel asked the witness if "unrestricted operation" in the field had not resulted in the waste of many millions of cubic feet of gas because casinghead plants were not available for the utilizing thereof during the flush production period, to which objection was made by Mr. McKeever, of Counsel for the Plaintiff, to the effect that the statement was a mere statement for the purpose of assuming a fact not proven and prejudicial; that the witness answered that such had happened in every field in the United States which has been operated without restriction, and that that same loss is now happening in Oklahoma City under restricted flow; that in his opinion this loss or waste would not be increased by unrestricted flow, in that the manufacturers at this time have no means of basing assurance of production from day to day and cannot know whether the production will be in the ratio of 60 per cent. of their capacity or be but 10 per cent. thereof; that the witness has gone through the Oklahoma City field many times and without exception every plant in the field is wasting residue gas at the plant and that gas is "popping off" in every section of the field, except in the lime area where the gas is practically dissipated; that the witness was not familiar with the production of the Champlin Naden well since June 23rd; that a company cannot install large equipment for flush casinghead gas production; that the present capacity of the plants in the Oklahoma City field is such that a much greater volume of casinghead gas than is being handled could be handled if more equally distributed over a 24 hour period; that Counsel for the Defendants asked the witness if it was not dangerous to operate large wells in the Oklahoma City field at night, and the witness thought there was a lot of "bugger boo" in that situation; Counsel thought that such situation was more the result of caution, to which the witness replied: "Run-
[fol. 546] ning under the guise of caution"; that Counsel thereupon suggested that there were many operators who did not care to take the risk of operating wells at night on

account of the danger of running wild, to which the witness replied that but three wells had gotten beyond control out of 800, which was not a very high percentage; that the witness thought the idea of operating in daytime to avoid danger, was ridiculous, and Counsel again reminded the witness that other men thought that was "proper caution", to which the witness replied:

"There have been many fictitious statements built up in this country."

Witness excused.

RAY M. COLLINS, recalled by the Plaintiff in rebuttal, *and* testified, in substance, as follows:

Direct examination.

By Mr. Glasser, of counsel for plaintiff:

That the witness has heard that the Phillips Petroleum Company has installed 9⅝ inch casing in some of its wells in the Oklahoma City field; that the witness was thereupon asked if he had had a conversation with Mr. McKeever in the corridor of the Court House, about the matter, and stated he believed he had, and that the substance of such conversation was that the Phillips Company had installed such casing to get the ultimate production.

Witness excused.

That thereafter, on the 3rd day of August, 1931, the cause coming on for argument and final submission, Mr. German of Counsel for defendants, called the Court's attention to the fact that Mr. Ramsey of Counsel for the Plaintiff, and himself, had agreed that any orders of the Corporation Commission might be introduced in evidence, and thereupon Mr. German introduced in evidence, with the permission of the Court, as Defendants' Exhibits "A", "B", "C" and "D", copies of Corporation Commission orders numbered [fol. 547] 829, 878 and 920, and a letter dated June 10, 1915, addressed to A. L. Walker by the Commission, signed by W. L. Humphrey, Commissioner.

And thereupon, the Plaintiff asked to have the case reopened and to be permitted to offer in evidence a document to be marked "Plaintiff's Exhibit No. 44", same being a photostat of an original Report and Recommendations of Operating Committee, appointed February 25, 1931, In Re Gas Conservation and Water Intrusion, Oklahoma City field, addressed under the date of March 11, 1931, to Wirt Franklin, Chairman, Oklahoma City Operators, Oklahoma City, Oklahoma; to which the Defendants objected on the ground that the document is incompetent, irrelevant and immaterial and that reopening of the case would involve, assuming the document to be competent, the necessity of the Defendants introducing some proof with reference to it, and Counsel for Defendants stated that said document had never been presented to the Commission, but was a matter of intercommunication between producers in the Oklahoma City field; whereupon, Counsel for Plaintiff stated that evidence in an ancillary hearing in the case, showed that the matter covered by said document went to the Operators' Committee and was there rejected; that neither of Counsel for the Plaintiff knew of said document at the time this cause was tried on the main issue; that after argument during the course of which Plaintiff proposed to prove the signatures on said instrument by E. F. Guidinger, one of the signers, the Court declined to permit such proof to be made, and sustained the objection to the introduction of said instrument, and to all of the rulings of the Court in this connection, the plaintiff was allowed exceptions thereto.

Thereupon the cause is argued to the Court.

During the argument by Ex-Attorney General Charles West, Special Counsel for the Governor of the State of Oklahoma in this case, Judge Kennamer referring to a brief Mr. West had filed in this case, said to Mr. West:

"I get the impression you thought the law was being administered under monopoly at this time. This is what I want to find out."

[fol. 548] To which Mr. West replied: "You get the right idea."

Thereupon Judge Kennamer again addressed Mr. West as follows: "That is right, is it?" To which Mr. West replied:

"I think the administration of this law by the Umpires appointed by the oil companies is iniquitous, and we have asked them to change it, and if they don't change, I think they will be compelled to."

Judge Kennamer: "That is a very important matter."

To which Mr. West replied:

"I think it is, but it does not destroy the law."

Counsel for the defendants objected to the inclusion of the foregoing statements of General West upon the ground that his first statement and the first part of his second statement are mere expressions of his opinion which is not concurred in by the defendants or their counsel and that the second part of his second statement is outside the issues and beyond the evidence in the case. The court denies said objections and includes said statements of General West herein because of a reference which was made thereto by Judge Kennamer in his dissenting opinion.

(Clerk's Note.—Exhibits to Statement of evidence not embodied here for reason same printed as separate Volume of Exhibits, in 4 parts.)

[fol. 549] In the United States District Court

[Title omitted]

Stipulation in re Statement of Record

Solicitors for the Plaintiff and the Defendants hereby agree that the foregoing is a correct narrative statement of the evidence together with all Exhibits pertinent to the issues on appeal to the Supreme Court of the United States which was received upon the final hearing of the above entitled cause.

Dated this the 10th day of October, 1931.

Harry O. Glasser, H. G. McKeever, Geo. S. Ramsey, Edgar A. De Meules, Attorneys for the Plaintiff. J. Berry King, Attorney General of Oklahoma; Jess A. Ballard, Ass't Att'y Gen'l; John H. Miley, E. S. Ratliff, St. P. Z. German, Attorneys for Defendant Corporation Commission and the Individual Members Thereof and for Defendants J. Berry King, as Attorney General, and Lewis R. Morris, as County Attorney.

[fol. 550] IN UNITED STATES DISTRICT COURT

[Title omitted]

CERTIFICATE OF NARRATIVE STATEMENT

The foregoing narrative statement of the evidence is hereby allowed and approved, and where therein the testimony of any witness is reproduced in the exact words of the witness, and where therein the Exhibits are set forth in full, it was so desired by the parties, and the Court hereby directs that it be so done; and the same is hereby ordered filed as a statement of all of the evidence taken in the above entitled cause and to be included in the record on appeal in the above entitled cause as provided in paragraph (b) of Equity Rule 75.

Dated this the 15th day of October, 1931.

John H. Cotteral, Circuit Judge. Orie L. Phillips, Circuit Judge. F. E. Kennamer, District Judge.

[File endorsement omitted.]

[fol. 551] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER STAYING ENFORCEMENT—Filed June 13, 1931

This cause coming on to be heard on this 13th day of June, 1931, upon the application of the plaintiff for an order staying the enforcement against the plaintiff of the proration orders of the Corporation Commission of Oklahoma in the Oklahoma City field pending the appeal from the order of February 9th, 1931, denying an application for a temporary injunction in this cause, the parties appearing by their attorneys of record, and the matter having been submitted upon the amended and supplemental bill of complaint filed herein on May 29th, 1931, the affidavits introduced by the respective parties hereto, and the arguments of counsel, and the court being fully advised in the premises, finds that the plaintiff will suffer irreparable loss and injury unless such stay be granted, and that such stay should be granted on condition that the plaintiff shall not take from the Okla-

homa City field, until the further order of this court, in excess of ten thousand barrels of crude oil per day, and give a good and sufficient bond in the sum of $200,000, as hereinafter provided.

[fol. 552] Now, therefore, it is ordered and adjudged until the further order of this court, that the defendants, Paul Walker, E. R. Hughes and C. C. Childers, individually and as members of the Corporation Commission of the State of Oklahoma, and all persons acting by or under them be and they are hereby enjoined from instituting any proceedings against the plaintiff under the provisions of Sections 3498, 3499 and 7959, Compiled Oklahoma Statutes 1921, on account of alleged violations of said proration order or orders; that the defendant, Lewis R. Morris, individually and as county attorney of Oklahoma County, Oklahoma, and J. Berry King, individually and as Attorney General of the State of Oklahoma, and all persons acting by, through or under them, be and they are hereby enjoined from instituting or prosecuting receivership proceedings against the plaintiff under the provisions of Section 7962, Compiled Oklahoma Statutes of 1921.

It is further ordered and adjudged that until the further order of this court the plaintiff shall not produce from its wells in the Oklahoma City field now drilled or hereafter to be drilled, crude oil in excess of ten thousand barrels per day.

It is further ordered and adjudged that J. Berry King, as Attorney General of the State of Oklahoma, immediately take the necessary action to dissolve the restraining order or temporary injunction heretofore issued in Cause No. —, entitled, "State of Oklahoma, ex rel. J. Berry King, Attorney General versus Champlin Refining Company", now pending in the District Court of Oklahoma County, Oklahoma.

It is further ordered and adjudged that this order shall become effective upon the plaintiff giving a good and sufficient bond in the sum of $200,000, conditioned to pay, in the event such proration order or orders shall be finally ad-

[fol. 553] judged in this suit to be valid, any damages that may finally be adjudged to have accrued to any person by reason of any violation or violations by the plaintiff of such proration order or orders including the damages, if any,

which may be adjudged finally by any court of competent jurisdiction to have been sustained by adjoining or adjacent owners by the drainage of their crude oil by reason of the fact that plaintiff shall take crude oil in excess of the proration order or orders while such adjoining or adjacent owners are limited to the terms thereof, and running to the Corporation Commission of the State of Oklahoma for the use and benefit of such person or persons, their heirs, successors and assigns; and to be approved by the clerk of this court.

It is further ordered and adjudged that said bond shall be given in any event not later than ten days from this date.

The above order is approved by Cotteral, Circuit Judge, except as to leave given to the plaintiff to produce oil in excess of existing proration orders.

Guthrie, Oklahoma, June 13th, 1931.

John H. Cotteral, Circuit Judge. Orie L. Phillips, Circuit Judge. F. E. Kennamer, District Judge.

[File endorsement omitted.]

[fols. 554 & 555] Bond on stay order for $200,000, approved and filed June 22, 1931, omitted in printing.

[fol. 556] In United States District Court

[Title omitted]

Order Vacating Stay Order—Filed Aug. 5, 1931

The said cause comes on for determination of the petitions of Phillips Petroleum Company, et al., to vacate the order of this court dated June 13, 1931, granting to the plaintiff herein a stay of the proration orders of the defendant Commission, and ordering that the plaintiff should not produce from its wells in the Oklahoma City field crude oil in excess of 10,000 barrels per day, pending appeal of the plaintiff from an order of this court denying it a temporary injunction in this cause.

And the court having considered the report of Honorable A. G. C. Bierer, special master to whom said petitions were referred, and the exceptions to said report, and being fully advised, it is this day

Ordered that said exceptions be and they are hereby overruled and said report and the findings contained therein be and they are approved and adopted; and it is further

Ordered that the said stay order of June 13, 1931, to the extent aforesaid, be and it is hereby vacated and set aside. To which the plaintiff at the time duly excepted and excepts.

Dated August 5, 1931.

John H. Cotteral, Circuit Judge. Orie L. Phillips, Circuit Judge.

I dissent from the action of the majority of the Court in vacating the order of June 13, 1931.

F. E. Kennamer, District Judge.

[File endorsement omitted.]

[fol. 557] In United States District Court

Motion to Reduce Bond—Filed Aug. 31, 1931

Comes now Champlin Refining Company, a New Mexico corporation, Plaintiff, and represents to the Court:

That on the 13th day of June, 1931, an order was entered in this cause enjoining the Defendants from assessing penalties against this plaintiff for any alleged violation of the Proration Orders of the Corporation Commission, and further enjoining this Plaintiff from producing from its leases in the Oklahoma City field, crude oil in excess of 10,000 barrels per day, until the further order of this Court, upon filing with the Clerk of said Court an acceptable bond in the sum of $200,000.00, conditioned for the payment of any damages that might be adjudged to have accrued to any person or persons by reason of any violation by this Plaintiff of such Proration Orders;

That said bond has been filed and approved by the Clerk and is now in full force and effect; that in order to obtain such bond it became necessary for this Plaintiff to deposit

with the National Surety Company, surety thereon, — the sum of $100,000.00 in United States Government Bonds as collateral, and to agree to pay the said Surety Company as further collateral to the obligation thereon the sum of $5,000.00 per month until an additional $100,000.00 shall have been deposited; and that if such bond be not reduced by this Court, and the Surety relieved of a continuing increasing responsibility thereon, which in fact will not arise or exist, it will be necessary for this Plaintiff to continue said monthly payments to said Surety Company in the sum of $5,000.00 per month for a period of twenty months; [fol. 558] That in computing the amount for which said bond should be required, Judge Phillips announced orally that a majority of the Court has assumed that for a basis thereof the wells of the Plaintiff would produce sand Order as so entered on June 13, 1931, for a period of approximately ninety days on the assumption that the matter would be finally determined in the United States Supreme Court within that period of time, at the rate of 10,000 barrels per day, fifty per cent of which volume of crude oil so produced might be ultimately shown to have been unlawfully drained from offset properties, and that upon the market value as of that day of Thirty-five Cents per barrel, such volume of crude oil so unlawfully drained, if ultimately so found, would be of the approximate value of $157,500.00;

That before the said ninety day period had expired, to-wit: on the 5th day of August, 1931, when but forty-five days of such period had expired, this Court vacated the above described Order of June 13, 1931, and that on August 4, 1931, the wells of this Plaintiff were shut in by the Governor of the State of Oklahoma in the use of the military authority of the state, and that the wells of this Plaintiff in the Oklahoma City field have not produced since that date and will not be produced in violation of the military order of the Governor of the State of Oklahoma or of the Proration Laws of the State of Oklahoma as enforced by the Corporation Commission of said state, unless and until the Supreme Court of the United States shall so order;

That under said Order of June 13, 1931, and within said forty-five day period, this Plaintiff produced a total of

423,802.12 barrels, and that during such period of time would have been entitled to produce without any Court order 77,305.08, so that the excess of production upon account of the Court Order of June 13, 1931, over and above that volume which might have been produced under the Proration Orders of the Corporation Commission was 346,497.04, and upon the assumption that fifty per cent thereof was unlawfully drained from off-set properties, a total of 173,248.52 barrels would represent the entire drainage that [fol. 559] might be charged against the Plaintiff: that the total market value of such excess production upon the basis of the gravity thereof as run was $107,590.94; that in the event fifty per cent thereof was unlawfully drained, the total value of such oil so unlawfully drained for the entire period of time would be $53,795.47, and a bond in the sum of $60,000.00 would adequately protect any and all persons who may have been damaged by the production of such oil, in the event such Proration Orders may finally be adjudged to be valid;

That this Plaintiff corporation is thoroughly solvent and has a net worth of sould value in excess of the sum of Seven Million Dollars, and is amply able to respond in damages to any person or persons should the entire value of said oil calculated at any time upon any basis be ultimately determined to have been wrongfully drained against such person or persons; that it is inequitable and unnecessarily burdensome upon this Plaintiff to require it to continue to deposit $5,000.00 monthly to said Bonding Company without any liability continuing upon said bond, so that said bond should be reduced to the sum of $60,000.00, or to such other sum as may in the discretion of this Honorable Court seem proper.

Wherefore this Plaintiff moves the Court that an order be entered reducing the amount of the bond herein given in conformity with the Order of June 13, 1931, to the sum of Sixty Thousand ($60,000.00) Dollars, or to such other sum as to this Honorable Court may seem proper and just, and that in addition thereto an Order of this Court be entered releasing the National Surety Company from any liability upon the bond which it has heretofore executed in behalf of this Plaintiff in excess of said sum so fixed by this Honorable Court.

[fol. 560] Dated this 29th day of August, 1931.

Champlin Refining Company, a New Mexico Corporation, by Harry O. Glasser, H. G. McKeever, Edgar S. De Meules, Geo. S. Ramsey, Counsel.

Duly sworn to by G. E. Leverton. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 561] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed Sept. 23, 1931

The above named plaintiff, conceiving itself aggrieved by the decree and order made in the above entitled cause on the 11th day of September, 1931, does hereby appeal from said order and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors, which is filed herewith, and prays that the appeal may be allowed, and that a transcript of the record, proceedings, exhibits and papers upon which said decree and order was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this the 23rd day of September, 1931.

Harry O. Glasser, H. G. McKeever, Geo. S. Ramsey, Edgar S. de Meules, Attorneys for Plaintiff-Appellant.

[File endorsement omitted.]

[fol. 562] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed Sept. 23, 1931

The Plaintiff concurrently herewith files its Petition for Appeal from the decree of this Court made and entered on the 11th day of September, 1931, to the Supreme Court of the United States, and herewith accompanies the same with this Assignment of Errors, upon which it will rely upon its

prosecution of the Appeal in the above entitled cause from the Decree so made, and states that this Honorable Court erred:

(1) In holding and decreeing that the Act of the Oklahoma Legislature approved February 11, 1915, entitled "An Act defining and prohibiting the waste of crude oil or petroleum, providing for the equitable taking of the same from the ground and conferring authority on the Corporation Commission, prescribing the penalty for the violation of the Act and declaring an emergency", embodied in Sections 7954 to 7963, inclusive, Oklahoma Compiled Statutes of 1921, hereinafter denominated "Curtailment Act", is not in contravention of the Fourteenth Amendment to the National Constitution in that it deprives the Plaintiff of its property without due process of law.

(2) In failing to hold and decree the said Curtailment Act in contravention of the Fourteenth Amendment to the [fol. 563] National Constitution in that it is too uncertain and indefinite to confer upon the Corporation Commission of the State of Oklahoma power and authority to make the orders, rules and regulations Plaintiff complains of in its Third Amended and Supplemental Bill and/or to make rules, regulations and orders of any effect beyond the prevention of the actual physical waste of crude oil in the production thereof in the State of Oklahoma.

(3) In failing to hold and decree that said Curtailment Act in contravention of the Fourteenth Amendment to the National Constitution insofar as it undertakes to vest power in the Corporation Commission to make rules and regulations in the form promulgated and so introduced in evidence in this case restraining the Plaintiff and other oil producers in the Oklahoma City field and other oil fields in Oklahoma from producing oil without physical waste from leases owned by such producers.

(4) In failing to hold and decree the Curtailment Act in contravention of the Fourteenth Amendment to the National Constitution insofar as it undertakes to empower the Corporation Commission to make rules and regulations prohibiting the Plaintiff and others similarly situated from extracting from its leases and/or their leases in the Oklahoma City oil field and other fields in the State of Okla-

homa, all the oil its wells will produce without the application of artificial energy, so long as the Plaintiff has facilities for the customary and usual refining and marketing utilization of such oil so produced.

(5) In failing to hold and decree the said Curtailment Act entire and inseparable and as such a price-fixing statute delegating authority to the Corporation Commission to fix prices of crude oil after making the investigation required by Section 2 of the Act, and that when, as of necessity the Act be thus construed, must likewise necessarily be held to be in violation of the Fourteenth Amendment to the National Constitution, in that it deprives

(a) the Plaintiff of its liberty of contract;

[fol. 564] (b) equal protection of the law, and

(c) its property without due process of law.

(6) In failing to hold and decree that, if said Curtailment Act be separable and the second section thereof unconstitutional or separable therefrom, the whole Act, without Section 2, remains void for uncertainty in that it violates the Fourteenth Amendment to the National Constitution in that it is too vague, indefinite and uncertain to vest authority in the Corporation Commission to make and enforce any of the rules, regulations and orders Plaintiff complains of in this case beyond the suppression of actual physical waste of crude oil.

(7) In failing to hold and decree that if said Curtailment Act be separable and the second section thereof separable therefrom, the Act is nevertheless unconstitutional and violative of the Fourteenth Amendment and of Section 8 of Article 1 of the Federal Constitution, in this, to-wit: That it forbids the production of crude oil in excess of reasonable market demands and gives the Corporation Commission of the State of Oklahoma the authority to determine what shall be reasonable market demand, and that the enforcement of such provisions must necessarily result in the fixing of the price of crude oil and must of necessity result in the burdening and regulation of interstate commerce in crude oil, and its products.

(8) In refusing to hold and decree that the following orders of the Corporation Commission in Cause No. 10,146

were intended to and actually did and do have the effect of controlling prices of crude oil in the Oklahoma City field and other fields in Oklahoma and are void because they are in excess of the powers conferred upon the Commission by the Curtailment Act, insofar as they undertake to suppress and restrain the production of crude oil in the Oklahoma City field and other Oklahoma fields without actual physical [fol. 565] waste of said minerals, said orders being as follows:

(a) Order No. 5189 entered June 30, 1930,

(b) Order No. 5292 entered August 30, 1930,

(c) Order No. 5337 entered September 30, 1930,

(d) Order No. 5343 entered October 6, 1930,

(e) Order No. 5345 entered October 10, 1930,

(f) Order No. 5369 entered October 28, 1930,

(g) Order No. 5374 entered November 3, 1930,

(h) Order No. 5387 entered November 8, 1930,

(i) Order No. 5396 entered December 4, 1930,

(j) Order No. 5413 entered December 30, 1930,

(k) Order No. 5414 entered December 30, 1930,

(l) Order No. 5468 entered April 20, 1931,

(m) Order No. 5486 entered May 29, 1931,

(n) Order No. 5548 entered June 27, 1931,

(o) Order No. 5549 entered June 29, 1931;

together with the respective Journal Entries made by the Commission for the enforcement of these orders, and Plaintiff re-states that these orders separately and collectively have the force and effect of depriving plaintiff of its

(a) liberty of contract.

(b) equal protection of the laws, and

(c) property without due process of law,

in violation of the Fourteenth Amendment to the National Constitution.

(9) In failing to hold and decree that the orders identified in Assignment of Error No. 8, are unconstitutional and violative of the Fourteenth Amendment and of Section 8 of Article 1 of the Federal Constitution, in this, to-wit: That they forbid the production of crude oil in excess of reasonable market demands as determined by the Corporation Commission, and that such provisions must necessarily result in the fixing of the price of crude oil and must of neces- [fol. 566] sity result in the regulation of interstate commerce in crude oil, and its products.

(10) In refusing to hold and decree that the orders of the Corporation Commission identified in Assignment of Error No. 8, were not promulgated for the purpose of preventing waste or protecting any other public interest, but were, on the contrary, promulgated and sought to be enforced for the purpose of controlling the crude oil market for the benefit of a particular class, to-wit: producers of crude oil.

(11) In refusing to hold and decree that the orders of the Corporation Commission, identified in Assignment of Error No. 8, were promulgated for the purpose of and did fix market demand for crude oil, within the State of Oklahoma, and were designed to and did limit the production of crude oil within the State of Oklahoma, to such figure as would equal the market demand thus arbitrarily fixed by the Corporation Commission.

(12) In holding and decreeing that to thus limit the production of crude oil to such arbitrarily fixed market demand, constitutes a reasonable and necessary means of preventing physical waste of crude oil.

(13) In failing to find that the market demand for crude oil within the State of Oklahoma and from each field thereof, including the Oklahoma City field, as found by the Corporation Commission in the orders identified in Assignment of Error No. 8, was ascertained and computed merely by receiving from the pipe line companies which had connections in each field, the volume of crude oil which such pipe line company, or pipe line companies, "nominated" to run and purchase during the period fixed within each of said orders.

(14) In failing to hold and decree that the action of the Corporation Commission in computing market demand en-
[fol. 567] tirely upon the "nominations" of the pipe line companies, sustains a holding that the purpose of the orders described in Assignment of Error No. 8, was not to prevent waste or protect any other public interest, but rather to control the market for crude oil for the oil producers within the State of Oklahoma; and further sustains a holding that the orders so described do not employ reasonable or necessary means to prevent physical waste.

(15) In failing to find that immediately following the en banc announcement by the Corporation Commission on March 4, 1931, that the allowable production from the Oklahoma City field should be raised from 125,000 barrels per day to 150,000 barrels per day, the Stanolind Crude Oil Purchasing Company, a subsidiary of the Standard Oil of Indiana and one of the principal purchasers of crude oil within the State of Oklahoma, at once lowered its posted price for crude oil purchased within the State, from $1.07 per barrel, to 67¢ per barrel, and that on March 5, 1931, upon the written request of the Governor of Oklahoma, the Corporation Commission, without further hearing, immediately rescinded its announcement of March 4, 1931, thereby determining market demand upon the caprice of the Governor and the cut in price by the Stanolind Company.

(16) In failing to hold and decree that such action of the Corporation Commission in rescinding its order identified in the last preceding Assignment of Error, without hearing thereon, but solely upon the announcement of such cut in price, sustains a finding that the orders of the Commission described in Assignment of Error No. 8, were not promulgated for the purpose of preventing waste or protecting any other public interest, but were, on the contrary, so promulgated, for the purpose of controlling the crude oil market for the benefit of oil producers within the State of Oklahoma; and that the means employed by such orders were not reasonable and necessary for the purpose of preventing physical waste.

[fol. 568] (17) In failing to hold and decree that the appointment of umpires by the orders described in Assignment of Error No. 8, whose salaries are paid by private

operators, sustains a finding that the said orders are, and were, not promulgated for the purpose of protecting any public interest, but for the purpose of benefiting the operator paying the salaries of such umpires.

(18) In refusing to hold and decree that the market demand which is fixed by the orders of the Corporation Commission identified in Assignment of Error No. 8, is to the extent of at least 65% thereof, an interstate market demand.

(19) In failing to find that the said Curtailment Act has never been enforced by orders of the Corporation Commission, either as a waste measure or otherwise, except in periods when overproduction of crude oil has threatened a reduction of the posted or market price thereof.

(20) In refusing to hold and decree that the failure of the Corporation Commission to enforce said Curtailment Act except in periods of overproduction sustains a necessary finding that the purpose of the said curtailment act and of the orders of the Commission identified in Assignment of Error No. 8, was to control the market for a particular class, to-wit: The oil producer, rather than for the purpose of preventing physical waste of natural resources.

(21) In refusing to hold and decree that without the provisions of Section 5 of the Curtailment Act requiring the Commission to gauge or cause to be gauged each oil well for the purpose of determining its production, the provisions of Section 4 of the Act would be unconstitutional in that it vests in the Commission unlimited and unrestrained arbitrary power and discretion over Plaintiff's property and the property of others similarly situated in violation of the due process clause of the Fourteenth Amendment to the National Constitution and deprives and deprived Plaintiff and others similarly situated of their [fol. 569] liberty of contract and equal protection of the laws guaranteed by the Fourteenth Amendment to the National Constitution.

(22) In refusing to hold and decree that a gauge of each well required by Section 5 of the Curtailment Act was a condition precedent to the Commission's authority to make

any rules or orders regulating or specifying the amount of oil such well shall or may be permitted to produce.

(23) In failing to hold and decree that a legal or valid gauge of the wells in either the Seminole or Oklahoma City fields or other fields, had not been made by the Commission or under the Commission's orders and directions and that without such a gauge, the Commission was powerless to exercise the authority attempted to be conferred upon it by Sections 3 and 4 of the Curtailment Act.

(24) In refusing to hold and decree that gauges made in accordance with the rules of the Commission permitting the operator to gauge his own wells, in the presence of a representative of an adjoining operator, although agreed to by the majority of the Operators's Committee or Umpire, are void in that interested parties were permitted to determine the basis (potential production) for the proration of markets in which such operators are and were interested.

(25) In refusing to hold and decree that the Oklahoma Legislature was without power to delegate authority to the Corporation Commission to create the office of Umpire and prescribe the qualifications and duties thereof and to "arrange" for the payment by beneficiary interests, of his salary, and that if Section 5 of the Curtailment Act undertakes to vest that authority in the Commission, it is void under Section 1 of Article 4 of the Oklahoma Constitution and Section 1 of Article 5 of the Oklahoma Constitution.

[fol. 570] (26) In refusing to hold and decree that the Commission was without authority to delegate to Ray Collins and/or Otto Bradford as Umpire or Umpires any jurisdiction of a discretionary nature and that all the rules and regulations undertaking to vest any powers in Collins and Bradford other than purely clerical or ministerial, are void.

(27) In refusing to hold and decree that gauges made under the supervision of Collins and Bradford are illegal and void because their appointment as Umpires was against public policy and contrary to every sense of public decency and that the proration orders and regulations are all permeated with this inseparable vice and that neither

Plaintiff nor others similarly situated should be coerced under threatened penalties to obey any orders and regulations so created.

(28) In refusing to hold and decree that the payment of salaries by the Operator's Committee collected by the Committee from persons, firms and corporations engaged in the production of crude oil in Oklahoma, and owning pipe lines and refineries within such State, to Ray Collins and decency and vitiates all their alleges acts and so far contaminates the Commission's rules and regulations as to render them unenforceable and null and void as laws regulating and restraining the production of crude oil in Oklahoma.

(29) In refusing to hold and decree that under Section 1 of Article 15 of the Oklahoma Constitution and Section 126 of the Oklahoma Compiled Statutes of 1921, the failure of Ray Collins and Otto Bradford to take and subscribe to the oath of office of Umpire or Umpires was a misdemeanor and operated to forfeit the right of each to the office of Umpire.

(30) In refusing to hold and decree that insofar as Section 8 of the Curtailment Act undertakes to authorize the [fol. 571] Commission to impose fines under Section 3498 of Oklahoma Compiled Statutes of 1921 for the violation of any of its rules and orders complained of in this case, the same is in violation of Section 1 of Article 4 of the Oklahoma Constitution, Sections 19 and 35 of Article 9 of the Oklahoma Constitution.

(31) In refusing to hold and decree that the orders, rules and regulations of the Commission and their enforcement operate directly to interfere with, restrain, and burden interstate commerce in violation of Section 8 of Article 1 of the National Constitution.

(32) In making and entering, over the objection of Plaintiff, its Final Decree of September 11, 1931.

(33) In failing and refusing to define the status of the Plaintiff as that of an integrated Company, and in refusing to grant Plaintiff's Requested Finding of Fact No. 4.

(34) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 6.

(35) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 7.

(36) In applying a so-called "Revised Formula" in determining the Potentials of certain wells in the Oklahoma City field, resulting in a calculated potential upon such wells which equals but one-third of the potential for such well as carried upon the records of the Corporation Commission.

(37) In failing and refusing to give Plaintiff's Requested Finding of Fact No. 9, in connection with the Court's Finding of Fact No. 5.

(38) In the finding set forth in the concluding sentence of the Court's Finding of Fact No. 5, for the reason that [fol. 572] the same constitutes a finding of an affirmative fact by reason of the silence of the record upon the subject matter thereof.

(39) In its Finding of Fact No. 6.

(40) In its Finding of Fact No. 7.

(41) In its Finding of Fact No. 10.

(42) In refusing to grant Plaintiff's Requested Finding of Fact No. 12.

(43) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 13.

(44) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 14.

(45) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 15.

(46) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 16.

(47) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 17.

(48) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 18.

(49) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 19.

(50) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 20.

(51) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 22.

(52) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 24.

(53) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 26.

(54) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 27.

(55) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 28.

[fol. 573] (56) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 29.

(57) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 30.

(58) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 31.

(59) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 32.

(60) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 33.

(61) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 36.

(62) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 37.

(63) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 38.

(64) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 40.

(65) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 41.

(66) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 43.

(67) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 44.

(68) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 45.

(69) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 46.

(70) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 47.

(71) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 48.

[fol. 574] (72) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 49.

(73) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 51.

(74) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 52.

(75) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 53.

(76) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 54.

(77) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 56.

(78) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 57.

(79) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 59.

(80) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 60.

(81) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 61.

(82) In its Finding of Fact No. 21.

(83) In its Finding of Fact No. 22.

(84) In its Finding of Fact No. 24.

(85) In its Finding of Fact No. 25.

(86) In its Finding of Fact No. 26.

(87) In its Finding of Fact No. 27.

(88) In its Finding of Fact No. 28.

(89) In its Finding of Fact No. 29.

(90) In its Finding of Fact No. 30.

(91) In its separately stated Conclusion of Law No. I.

(92) In its separately stated Conclusion of Law No. II.

(93) In its separately stated Conclusion of Law No. III.

[fol. 575] (94) In its separately stated Conclusion of Law No. IV.

(95) In its separately stated Conclusion of Law No. V.

(96) In its separately stated Conclusion of Law No. VI.

(97) In its separately stated Conclusion of Law No. VII.

(98) In its separately stated Conclusion of Law No. VIII.

(99) In its separately stated Conclusion of Law No. IX.

(100) In its separately stated Conclusion of Law No. X.

(101) In its separately stated Conclusion of Law No. XI.

(102) In its separately stated Conclusion of Law No. XII.

(103) In its separately stated Conclusion of Law No. XIII.

(104) In its separately stated Conclusion of Law No. XIV.

(105) In its separately stated Conclusion of Law No. XV.

(106) In its separately stated Conclusion of Law No. XVI, except that portion thereof which holds invalid Sections 8 and 9 of said Act.

(107) In its separately stated Conclusion of Law No. XVII.

(108) In its separately stated Conclusion of Law No. XVIII, except that portion thereof which holds that the Plaintiff is entitled to a permanent injunction against the enforcement of said Sections 8 and 9 of said Act.

(109) Overruling and denying Petition for Rehearing.

Wherefore the Appellant prays that said Decree be reversed, and that said District Court for the Western Dis-

trict of Oklahoma be ordered to enter a Decree reversing the decision of that Court in said cause.

Harry O. Glasser, H. G. McKeever, Edgar A. deMeules, Geo. S. Ramsey, Counsel for Appellant. Of Counsel: Nathan Scarritt, Van Stewart, Roy Elam, H. H. McKeever, Garrett Logan, Villard Martin, E. S. Champlin.

[File endorsement omitted.]

[fol. 576] IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

Equity. No. 1156

CHAMPLIN REFINING COMPANY, a Corporation, Plaintiff,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, et al., Defendants

ORDER ALLOWING APPEAL—Filed Oct. 17, 1931

Now, on this 15th day of October, 1931, came the plaintiff Champlin Refining Company, a New Mexico corporation, by its attorneys and files herein and presents to the Court its petition praying for the allowance of an appeal from the decree and order entered herein on the 11th day of September, 1931, to the Supreme Court of the United States, and it appearing that the plaintiff has filed therewith its Assignment of Errors, and the Court being fully advised in the premises does hereby allow an appeal to the Supreme Court of the United States as prayed for upon the filing of a bond in the sum of Two Thousand ($2,000.00) Dollars, with good and sufficient surety to be approved by the Court.

John H. Cotteral, Circuit Judge. Orie L. Phillips, Circuit Judge. F. E. Kennamer, District Judge.

[File endorsement omitted.]

[fols. 577-580] Bond on appeal for 2,000, approved and filed October 17, 1931, omitted in printing.

[fol. 581] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR CROSS-APPEAL—Filed Oct. 12, 1931

Your petitioners, Corporation Commission of the State of Oklahoma, and Paul Walker, E. R. Hughes and C. C. Childers, constituting the Corporation Commission of the State of Oklahoma, and their successors in office, and Paul Walker, E. R. Hughes and C. C. Childers, and J. Berry King as Attorney General of the State of Oklahoma, and J. Berry King, and Lewis R. Morris as County Attorney of Oklahoma County, State of Oklahoma, and Lewis R. Morris, defendants in the above-entitled cause, respectfully show that Champlin Refining Company, plaintiff in the above-entitled cause, has been allowed an appeal from the decree made on the 11th day of September A. D. 1913 in this cause, and your petitioners also consider themselves aggrieved by said decree in so far as it adjudges Sections 8 and 9 of the Act of the Legislature of the State of Oklahoma, entitled "An Act defining and prohibiting the waste of crude oil or petroleum, providing for the equitable taking of same from the ground, and conferring authority on the Corporation Commission, prescribing the penalty [fol. 582] for the violation of this Act, and declaring an emergency." Approved February 11th, 1915, and being Sections 7961 and 7962 of the Compiled Oklahoma Statutes, 1921, are not valid, and perpetually enjoining and restraining the defendants, J. Berry King, Attorney General of Oklahoma, and Lewis R. Morris, County Attorney of Oklahoma County Oklahoma, and each of them, their servants and employees, from enforcing or attempting to enforce the provisions or any part thereof of said Sections 8 and 9 of said Act, and therefore pray for the allowance of an appeal by them from said decree to the Supreme Court of the United States, for the reasons stated in the assignment of errors filed herewith.

Dated this the 12th day of October, A. D. 1931.

J. Berry King, Attorney General of the State of Oklahoma; Jesse L. Ballard, Assistant Attorney General of the State of Oklahoma; E. S. Ratliff, Attorney for the Corporation Commission of the State of Oklahoma; W. P. Z. German, John H. Miley, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 583] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed Oct. 12, 1931

Comes now the said Corporation Commission of the State of Oklahoma, and Paul Walker, E. R. Hughes, C. C. Childers, constituting the Corporation Commission of the State of Oklahoma, and their successors in office, and Paul Walker, E. R. Hughes, and C. C. Childers, and J. Berry King as Attorney General of the State of Oklahoma, and J. Berry King, and Lewis R. Morris as County Attorney of Oklahoma County, State of Oklahoma, and Lewis R. Morris, defendants in the above-entitled cause, and file the following Assignment of Errors upon which they will rely in the prosecution of the appeal herewith petitioned for in said cause from the decree entered upon the 11th day of September, A. D. 1931:

I

The Court erred in its sixteenth Conclusion of law, in holding that Section 8, providing punishment by fine and imprisonment for direct or indirect violations of the provisions of the Act of the Oklahoma Legislature approved [fol. 584] February 11, 1915, entitled, "An Act defining and prohibiting the waste of crude oil or petroleum, providing for the equitable taking of the same from the ground and conferring authority on the Corporation Commission, prescribing the penalty for the violation of the Act and declaring an emergency," being Section 7961, Compiled Oklahoma Statutes 1921, provided in terms a penalty for violation of the Act only, and not for violations of the Orders, Rules and Regulations of the Commission made pursuant to the Act for the purpose of carrying it into effect.

II

The court erred in not holding and decreeing that valid orders, rules and regulations of the Corporation Commission made pursuant to the Act for the purpose of carrying it into effect, became a part of the Act, and that violations of such orders, rules and regulations constitute a violation of the Act within the meaning of said Section 8.

III

The Court erred in its sixteenth Conclusion of Law, in holding that Sections 1, 3, 4, 5 and 6 of said Act of the Legislature of the State of Oklahoma, approved February 11th, 1915, being Sections 7954, 7956, 7957, and 7958 Compiled Oklahoma Statutes, 1931, are too indefinite and uncertain as penal provisions to warrant the imposition of the penalties provided in Section 8 of said Act, becoming Section 7961, Compiled Oklahoma Statutes, 1921; for violations thereof as distinguished from violations of the orders, rules and regulations of the Commission.

IV

The Court erred in its sixteenth Conclusion of Law in holding that Section 8 of said Act of the Oklahoma Legislature approved February 11th, 1915, being Section 7961, Compiled Oklahoma Statutes, 1921, is invalid.

V

The Court having found in its Finding of Fact No. XXVI, that, "no prosecution has been commenced against the plaintiff or any of its officers, agents or employees under [fol. 585] Section 8 of the Act," and not having found that such prosecution was threatened, or contemplated, it erred in construing said Section and pronouncing judgment upon its validity; and further erred in not holding and decreeing that the construction and validity of said Section 8 did not properly arise in this suit.

VI

The Court erred in its eighteenth Conclusion of Law, in holding and decreeing that the plaintiff is entitled to a permanent injunction against the defendants J. Berry King as Attorney General of the State of Oklahoma, and Lewis R. Morris, as County Attorney of Oklahoma County, Oklahoma, and their respective successors in office, enjoining them from instituting or prosecuting any proceedings against the plaintiff under and by virtue of the provisions of Section 8 of said Act, being Section 7961, Compiled Oklahoma Statutues, 1921.

VII

The Court erred in its said decree entered September 11th, 1931, adjudging that said Section 8 of said Act of the Oklahoma Legislature approved February 11th, 1915, being Section 7961, Compiled Oklahoma Statutes, 1921, is not valid, and perpetually enjoining and restraining J. Berry King, Attorney General of Oklahoma, and Lewis R. Morris, County Attorney of Oklahoma County, Oklahoma, and each of them, their servants and employees, from enforcing or attempting to enforce the provisions of said Section 8 of said Act, or any part thereof.

VIII

The Court erred in its sixteenth Conclusion of Law, in holding that the provisions of Section 9 of the Act of the Legislature of the State of Oklahoma, approved February 11th, 1915, being Section 7962 Compiled Oklahoma Statutes, [fol. 586] 1921, for the appointment of a receiver for the operation only of producing wells and marketing the product thereof, of any person violating the provisions of — Act, by a Court of competent jurisdiction at the suit of the State through the Attorney General, or any County Attorney, imposes a penalty.

IX

The Court erred in its sixteenth Conclusion of Law, in holding that Section 9 of the Act of the Oklahoma Legislature approved February 11, 1915, being Section 7962, Compiled Oklahoma Statutes, 1921, in terms imposes a penalty for violations of the Act only, and may not be invoked to secure the appointment of a receiver to operate the producing wells and market the production therefrom of any person, firm or corporation violating the orders, rules and regulations of the Commission made pursuant to the Act for the purpose of carrying it into effect.

X

The Court erred in not holding and decreeing that valid orders, rules and regulations of the Corporation Commission made pursuant to the Act for the purpose of carrying it into effect, became a part of the Act.

XI

The Court erred in not holding and decreeing that under the provisions of Section 9 of said Act of the Legislature of the State of Oklahoma, approved February 11th, 1915, being Section 7962 Compiled Oklahoma Statutes, 1921, the Attorney General or the County Attorney, may institute a proceeding in a Court of competent jurisdiction, against any person, firm or corporation violating the orders, rules and regulations of the Corporation Commission made pursuant to the Act for the purpose of carrying it into effect, for the appointment of a receiver of the producing properties of such person, firm or corporation with authority only to operate the producing wells and market the product thereof.

[fol. 587]

XII

The Court erred in its sixteenth Conclusion of Law, in holding that Sections 1, 3, 4, 5 and 6 of the said Act of the Legislature of the State of Oklahoma, approved February 11th, 1915, being Sections 7954, 7956, 7957, 7958, and 7959 Compiled Oklahoma Statutes, 1921, are too indefinite and uncertain as penal provisions to warrant the appointment of a receiver as provided by Section 9 of the said Act, being Section 7962 Compiled Oklahoma Statutes, 1921, for violations thereof, as distinguished from violations of the orders, rules and regulations of the Commission.

XIII

The Court erred in its sixteenth Conclusion of Law in holding that Section 9 of said Act of the Oklahoma Legislature, approved February 11th, 1915, being Section 7962, Compiled Oklahoma Statutes, 1921, is invalid.

XIV

The Court not having found that there is any pending proceeding for the appointment of a receiver pursuant to the provisions of Section 9 of said Act of the Legislature of the State of Oklahoma approved February 11, 1915, being Section 7962, Compiled Oklahoma Statutes, 1921, it erred in construing said section and pronouncing judgment upon its validity; and further erred in not holding and

decreeing that the construction and validity of said Section 9 did not properly arise in this suit.

XV

The Court erred in its eighteenth Conclusion of Law in holding and decreeing that the plaintiff is entitled to a permanent injunction against the defendant J. Berry King as Attorney General of the State of Oklahoma and Lewis R. Morris as County Attorney of Oklahoma County, Oklahoma, and their respective successors in office, enjoining [fol. 588] them from instituting or prosecuting any proceedings against the plaintiff under and by virtue of the provisions of Section 9 of said Act, being Section 7962, Compiled Oklahoma Statutes, 1921.

XVI

The Court erred in its said decree entered September 11th, 1931, adjudging that said Section 9 of said Act of the Oklahoma Legislature approved February 11th, 1915, being Section 7962, Compiled Oklahoma Statutes, 1921, is not valid, and perpetually enjoining and restraining J. Berry King, Attorney General of Oklahoma, and Lewis R. Morris, County Attorney of Oklahoma County, Oklahoma, and each of them, their servants and employees from enforcing or attempting to enforce the provisions of said Section 9 of said Act, or any part thereof.

Wherefore said defendants pray that said decree in so far as it adjudges Sections 8 and 9 of the said Act of the Legislature of the State of Oklahoma, approved February 11th, 1915, being Sections 7961 and 7962 of the Compiled Oklahoma Statutes, 1921, are not valid, and perpetually enjoining and restraining J. Berry King, Attorney General of Oklahoma, and Lewis R. Morris, County Attorney of Oklahoma County, Oklahoma, and each of them, and their servants and employees, from enforcing or attempting to enforce said Sections, be reversed, and that said decree be reformed, and decree rendered on the merits dismissing plaintiff's bill in its entirety and denying to it any relief,

and for such other and further relief as to the Court may seem just and proper.

J. Berry King, Attorney General of the State of [fol. 589] Oklahoma; Jesse L. Ballard, Assistant Attorney General of Oklahoma; E. S. Ratliff, Attorney for the Corporation Commission of Oklahoma; W. P. Z. German, John H. Miley, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 590] IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL—Filed Oct. 21, 1931

Now, on this the 17th day of October, A. D. 1931, on reading the petition of the Corporation Commission of the State of Oklahoma, and Paul Walker, E. R. Hughes and C. C. Childers, constituting the Corporation Commission of the State of Oklahoma, and their successors in office, and Paul Walker, E. R. Hughes and C. C. Childers, and J. Berry King as Attorney General of the State of Oklahoma, and J. Berry King, and Lewis R. Morris, County Attorney of Oklahoma County, State of Oklahoma, and Lewis R. Morris, for an appeal from the decree or order entered September 11, 1931, in the above entitled cause, and on consideration of the assignment of errors filed herewith, it is ordered that the appeal herein be allowed as prayed for and it is further ordered that a certified transcript of the record and all proceedings be transmitted to the Supreme Court of the United States.

It is further ordered that the bond on appeal be fixed at Two Hundred Fifty ($250.00) Dollars, conditioned as required by law, as a cost bond.

John H. Cotteral, Circuit Judge. Orie L. Phillips, Circuit Judge. F. E. Kennamer, District Judge.

[File endorsement omitted.]

[fols. 591 & 592] Bond on appeal for $250.00, approved and filed October 21, 1931, omitted in printing.

[fol. 593] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPE FOR RECORD TO BE SENT TO THE SUPREME COURT OF THE UNITED STATES—Filed Oct. 22, 1931

To the Clerk of the United States District Court for the Western District of the State of Oklahoma:

In making up the record and transcript for the Supreme Court of the United States in the above entitled cause on appeal from the decree or order of September 11th, 1931, you will include in the record and transcript only such parts as are hereby mentioned, omitting all other parts of the record, to-wit:

(1) Order of Circuit Court of Appeals for the Tenth Circuit assigning Honorable Franklin E. Kennamer as District Judge to the Western District of Oklahoma.

(2) The notice to The Governor of the State of Oklahoma, filed December 10th, 1930, and endorsement of service thereon.

(3) The Order of February 9th, 1931, denying Plaintiff's Application for Temporary Injunction.

(4) Petition for Appeal, dated April 22, 1931.

[fol. 594] (5) Order, dated April 22, 1931, allowing appeal.

(6) The notice to The Governor of the State of Oklahoma, together with the Governor's acceptance of service thereon, filed June 13th, 1931.

(7) Plaintiff's Third Amended and Supplemental Bill of Complaint filed by leave of Court on the 3rd day of Aug., 1931 (omitting exhibits thereto attached for the reason same are identified and printed in their entirety in the narrative of the evidence as Plaintiff's Exhibit 33).

(8) Answer of Defendants to Third Amended and Supplemental Bill of Complaint.

(9) Defendants' Requested Findings of Fact.

(10) Plaintiff's objections thereto.

(11) Defendants' reply to Plaintiff's objections to Defendants' Requested Findings of Fact.

(12) Plaintiff's Requested Findings of Fact.

(13) Order Denying and Disallowing Plaintiff's Requested Findings of Fact.

(14) Findings of Fact and exceptions thereto in the cause filed on September 11th, 1931.

(15) Conclusions of law and exceptions thereto filed in the cause on September 11th, 1931.

(16) Decree entered September 11th, 1931.

(17) Majority revised opinion of the Court filed on September 1st, 1931.

(18) Dissenting revised opinion of Judge Kemmamer, filed on October 17th, 1931.

(19) Plaintiff's Petition for Re-hearing, filed on September 11th, 1931.

(20) Order entered September 24th, 1931, denying Plaintiff's Petition for Re-hearing.

(21) Plaintiff's Petition for Appeal, filed on September 23rd, 1931.

(22) Plaintiff's Assignment of Errors on Appeal, filed [fol. 595] (23) Order Allowing Appeal, entered on October 17th, 1931.

(24) Plaintiff's Appeal Bond, filed October 17th, 1931.

(25) Condensed statement in narrative form of the evidence introduced at the hearing, together with all exhibits thereto attached, introduced at the trial.

(26) Order of June 13th, 1931.

(27) Bond thereon, approved June 22nd, 1931.

(28) Order Vacating Order of June 13th, 1931, and exceptions thereto.

(29) Motion to Reduce Bond, filed August 31st, 1931.

(30) Citation.

(31) This Præcipe.

Harry O. Glasser, H. G. McKeever, Geo. A. Ramsey, Edgar A. deMeules, Counsel for the Plaintiff.

[fol. 596] We, the undersigned, attorneys of record in the above entitled cause, do hereby accept service of a copy of

the foregoing præcipe made on us this the 19th day of October, 1931.

Jesse L. Ballard, Asst. Atty. Gen.; W. P. Z. German, J. H. Miley, E. S. Ratliff, for Defendant-appellees Corporation Commission of the State of Oklahoma and Paul Walker, C. C. Childers, and E. R. Hughes and for J. Berry King, as Attorney General for the State of Oklahoma, and Lewis R. Morris, as County Attorney of Oklahoma County, State of Oklahoma, and for the Defendant Lewis R. Morris, as Co. Atty. of Oklahoma County, Oklahoma; Chas. West, for the Governor of the State of Oklahoma.

[File endorsement omitted.]

[fol. 597] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPE FOR RECORD TO BE SENT TO THE SUPREME COURT OF THE UNITED STATES ON APPEAL BY DEFENDANT—Filed Oct. 22, 1931

To the Clerk of the United States District Court for the Western District of Oklahoma:

In making up the record and transcript for the Supreme Court of the United States in the above entitled cause on appeal allowed by the defendants from the decree or order of September 11, 1931, you will include in the record and transcript only such parts as are hereby mentioned omitting all other parts of the record, to-wit:

(1) Plaintiff's Third Amended and Supplemental Bill of Complaint filed by leave of Court on the 29th day of June, 1931; refiled Aug. 3, 1931.

(2) Answer of defendants to Third Amended and Supplemental Bill of Complaint.

(3) Findings of fact in the cause filed on September 11, 1931.

(4) Conclusions of law filed in the cause on September 11th, 1931.

(5) Revised opinion of the Court filed on Sept. 1st, 1931.

(6) Dissenting opinion of Judge Kennamer filed on October 17, 1931.

[fol. 598] (7) The Decree or Order entered on September 11, 1931.

(8) Defendants Petition for appeal filed on October 12, 1931.

(9) Defendants assignment of errors on appeal filed on October 12, 1931.

(10) Order allowing appeal entered on October 17th, 1931.

(11) Defendants appeal bond filed on October 21, 1931.

(12) Citation to plaintiff.

(13) Defendants Counter Præcipe.

(14) This Præcipe.

(15) Stipulation as to contents of Record.

J. Berry King, Attorney General of the State of Oklahoma; Jess L. Ballard, Assistant Attorney General of the State of Oklahoma; E. S. Ratliff, Attorney for Corporation Commission of the State of Oklahoma; W. P. Z. German, John H. Miley, Attorneys for Defendant.

We, the undersigned, attorneys of record for the Plaintiff in the above entitled cause do hereby accept service of a copy of the foregoing præcipe made on us this 22nd day of October, 1931.

Harry O. Glasser, H. G. McKeever, Geo. S. Ramsey, Edgar A. deMeules, Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 599] IN UNITED STATES DISTRICT COURT

[Title omitted]

COUNTER PRÆCIPE—Filed Oct. 22, 1931

To the Clerk of the United States District Court for the Western District of Oklahoma:

You are hereby requested, pursuant to Equity Rule No. 75, and Supreme Court Rule No. 10, to incorporate into the

transcript of record on the appeal herein, in addition to the portion of the record indicated by plaintiff herein by its præcipe, to be included in the transcript of the record herein, the following:

(1) Petition for cross-appeal filed October 12, 1931.
(2) Defendants' Assignment of Errors on Appeal filed October 12, 1931.
(3) Order Allowing Appeal entered on October 17th, 1931.
(4) Defendants Appeal Bond filed October 21, 1931.
(5) Citation on Appeal to plaintiff.
(6) Præcipe of defendants.
(7) This Counter Præcipe.
(8) Stipulation, as to contents of Transcript of Record.

J. Berry King, Attorney General, Jess L. Ballard, [fol. 600] Assistant Attorney General; E. S. Ratliff, Attorney for Corporation Commission of the State of Oklahoma; W. P. Z. German, Jno. H. Miley, Attorneys for Defendants.

We, the undersigned, attorneys of record for the plaintiff in the above entitled cause, do hereby accept service of a copy of the foregoing Counter Præcipe made on this 22nd day of October 1931.

Harry O. Glasser, H. G. McKeever, Geo. S. Ramsey, Edgar A. deMeules, Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 601] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO CONTENTS OF TRANSCRIPT OF RECORD—Filed Oct. 22, 1931

An appeal having been duly taken by both parties, plaintiff and defendants, to the Supreme Court of the United States from the Decree or Order entered September 11th, 1931, and it being provided by Title 28, 864, United States Code (R. S. Sec. 1013) that the transcript of the record filed in the Supreme Court by either appellant may be used on

both appeals; it is hereby stipulated and agreed between the attorneys for the respective parties that the transcript of record to be filed in the Supreme Court of the United States, pursuant to the appeal heretofore allowed to the plaintiff herein, and pursuant to the appeal heretofore allowed to the defendants herein shall include only such parts of the record, mentioned in the Præcipe filed by plaintiff October 22, 1931, and the præcipe filed by defendants October 22, 1931, and such transcript of record shall be used on both appeals.

Harry O. Glasser, H. G. McKeever, Geo. S. Ramsey, Edgar A. deMeules, Attorneys for Plaintiff. J. [fol. 602] Berry King, Attorney General; Jesse L. Ballard, Assistant Attorney General; E. S. Ratliff, Attorney for Corporation Commission of Oklahoma; W. P. Z. German, J. H. Miley, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 603] Clerk's certificate to foregoing transcript omitted in printing.

[fols. 604 & 604a] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME WITHIN WHICH TO FILE RECORD IN THE SUPREME COURT OF THE UNITED STATES—Filed in Supreme Court Oct. 26, 1931

For satisfactory reasons appearing to the Court, the time for filing the record in this cause in the Supreme Court of the United States, pursuant to the appeal sued out, is extended until the 25th day of November, 1931.

Dated this the 15 day of October, 1931.

John H. Cotteral, Circuit Judge. Orie L. Phillips, Circuit Judge. F. E. Kennamer, District Judge.

[fol. 604b] [File endorsement omitted.]

[fol. 605] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1931

No. 485

CHAMPLIN REFINING COMPANY, Appellant,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA et al., Appellees

APPELLANT'S DEFINITE STATEMENT OF POINTS UPON WHICH IT RELIES AND DESIGNATION TO PRINT ENTIRE RECORD—Filed Nov. 7, 1931

Appellant relies upon the following points:

First. The Oklahoma Corporation Commission's rules, regulations and proration orders (hereinafter referred to as orders) attached to appellant's Third Amended and Supplemental Bill and contained in Plaintiff's Exhibit 33, being legislative in their nature and made by an instrumentality of the state, are state laws within the meaning of the Constitution of the United States, and although an appeal therefrom is allowed to the Oklahoma Supreme Court by the Legislative Act involved in this case, nevertheless, as that court is without legislative power and can not be vested with such power by the Legislature, the appellant had the right to invoke the jurisdiction of the United States District Court to enjoin the enforcement of said orders without appealing first therefrom to the state Supreme Court.

[fol. 606] Second. The prohibitions of the Fourteenth Amendment to the Constitution of the United States are addressed to individuals acting as officers and agents of the state and as such may be enjoined by the Federal Court from using the power of their office to deny to any person the rights guaranteed by the Fourteenth Amendment to the National Constitution.

Third. The said orders of the Corporation Commission of the State of Oklahoma (hereinafter called Commission) being legislative in their nature, are laws within the meaning of the Constitution of the United States and the Acts of Congress regulating Federal Court jurisdiction.

Fourth. Section 2 of the Act of the Oklahoma Legislature approved February 11th, 1915, (1915 Session Laws, 28, being Sections 7954 to 7963 inclusive, Oklahoma Compiled Statutes, 1921) hereinafter referred to as the Curtailment Act, undertakes to authorize the Commission to fix the price of crude oil produced in Oklahoma and is therefore void in that it is in violation of the Fourteenth Amendment to the Constitution of the United States.

Fifth. Section 2 of the Curtailment Act is not a separable part thereof and therefore the whole act must fall as in violation of the Fourteenth Amendment to the Constitution of the United States.

Sixth. If Section 2 of the said Act is separable and unconstitutional, then the meaning of Section 3 and/or Section 4 thereof must be gathered from Section 2 within the rule that an unconstitutional part of a law may be considered in ascertaining the intent of the Legislature in the remaining parts of the law, and by the application of this rule it is clear that the Curtailment Act is a price-fixing [fol. 607] statute attempting to authorize the Commission to regulate and control prices to be paid and received for crude oil in the carrying on of a private business.

Seventh. If Section 2 of the Curtailment Act is separable and the remaining sections, or parts thereof, may be considered as independent of Section 2, then the Act, without Section 2, is too vague and uncertain to meet the requirements of due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

Eighth. Without section 2 of the Curtailment Act the remaining sections (particularly 3 and 4) are too vague, uncertain and indefinite to authorize the Commission to make the orders shown by Plaintiff's Exhibit 33 insofar as said orders go beyond the prevention of physical waste.

Ninth. Appellant's ownership of lands in fee and/or oil leaseholds thereon with the attendant production of crude oil therefrom and the manufacture of gasoline and other refined products from crude oil produced by it, is not a public or quasi public business subject to such regulations as the Curtailment Act imposes.

Tenth. The Curtailment Act is in violation of the Fourteenth Amendment to the Constitution of the United States

in that it denies the appellant the liberty of contract as defined by this court in Allgeyer v. State of Louisiana, 165 U. S. 578, and other decisions.

Eleventh. The aforesaid orders of the Commission restrict and burden interstate commerce in violation of the Commerce Clause of Section 8 of Article 1 of the Constitution of the United States.

[fol. 608] Twelfth. The Commission, in making each of the orders complained of, exceeded the powers conferred or attempted to be conferred upon it by the said Curtailment Act.

Thirteenth. The appellant's right to drill and take the natural flow of crude oil from its lands and/or oil leaseholds and thereafter devote the same to a useful purpose without physical waste is a vested property right protected by the Fourteenth Amendment to the Constitution of the United States and not subject to restraint or suppression by Act of the State Legislature or orders of the Commission.

Fourteenth. The Commission's rules complained of are unreasonably discriminatory against appellant and other producers of crude oil in what is known in the record as the Oklahoma City Oil Field in that they, without any reasonable basis therefor, restrict the production of crude oil in the Oklahoma City Field to a much less percentage of the potential capacity of the wells than allowed by the rules to be produced in the Seminole Oil Field and other oil fields in Oklahoma, and are therefore in conflict with the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

Fifteenth. Assuming the Curtailment Act is valid, nevertheless it has been and is being construed and administered by the Commission in such a manner as to make its operation a taking of appellant's property without that due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

Sixteenth. Without Section 5 of the Curtailment Act requiring the Commission to gauge or cause to be gauged [fol. 609] each oil well (sought to be prorated) for the purpose of determining its production, the provisions of Sec-

tion 4 of the Act would be unconstitutional in that that section vests in the Commission unlimited and unrestrained arbitrary power and discretion over appellant's property and others similarly situated (a) in violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States, (b) deprives the appellant of its liberty of contract, and (c) equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

Seventeenth. The gauge of each producing well in the Oklahoma City Oil Field as well as in the other prorated oil fields in Oklahoma required by Section 5 of the Curtailment Act was a condition precedent to the Commission's authority to make any order or orders specifying the volume of crude oil each well shall be permitted to produce.

Eighteenth. A legal gauge of the wells in the Oklahoma City Field, Seminole and/or other prorated oil fields in Oklahoma has not been made by the Commission or under its orders and directions and without such gauge the Commission was powerless to exercise the authority attempted to be conferred upon it by Sections 3 and 4 of the Curtailment Act.

Nineteenth. The Curtailment Act is not self-executing and the state Legislature having made no appropriations at any time for the payment of the expenses of gauging the wells and the salaries of agents of the Commission, all gauges of wells are illegal and void and the Commission's rules are ineffectual.

Twentieth. Gauges made in accordance with the Commission's orders permitting the operator to gauge his own [fol. 610] wells in the presence of a representative of an adjoining operator, although agreed to by the majority of the Operators' Committee and Umpire, are void in that private and non-official parties were permitted to determine the basis (potential production) for the proration of markets and the allowable production from the entire field in which all operators, including appellant, are interested and materially affected.

Twenty-first. The Legislature is without power to delegate authority to the Commission to create the office of

Umpire and prescribe the qualifications therefor and duties thereof and allow payment of the Umpires' salaries by the beneficiaries of the acts of the Umpires, and if Section 5 of the Act is construed to vest that authority in the Commission it is void under Section 1 of Article 4 and Section 1 of Article 5 of the Constitution of the State of Oklahoma.

Twenty-second. The Commission is without authority to delegate to Umpires any jurisdiction of a discretionary nature and all orders designed to vest any such powers in Umpires are void.

Twenty-third. The payment of salaries of Umpires by the Operators' Committee (a non-official organization), collected by said Committee from persons, firms and corporations engaged in the production of crude oil in Oklahoma and/or the operation of pipe lines and/or refineries within Oklahoma, is against public policy and vitiates all gauges of the wells and so far contaminates the Commission's orders as to render them unenforceable in so far as they undertake to restrain the production of crude oil in Oklahoma without actual waste.

[fol. 611] Twenty-fourth. Under Section 1 of Article 15 of the Oklahoma Constitution and Sections 126 and 1561 et al., of the Oklahoma Compiled Statutes, 1921, the taking and subscribing to an oath of office was a condition precedent to the umpires becoming de facto or de jure officers, and no such oath of office having been taken and subscribed by such umpires, their action in the premises was a misdemeanor and all their acts, including gauging the wells, are ipso facto void.

Twenty-fifth. Gauges made under the supervision of the umpires are illegal and void for the reason that the appointment and tenure of office of each umpire was and is against public policy.

Twenty-sixth. The appellant's petition for rehearing filed in the court below should have been granted as the evidence available thereon would have developed facts and events incident to Military rule taking place after the decree of the court below was announced showing the Executive Depart-

ment of the State Government construes the Curtailment Act as a price-fixing statute and enforces it as such.

Respectfully submitted.

Horace G. McKeever, Horace G. McKeever, Harry O. Glasser, Harry O. Glasser, Edgar A. de Meules, Edgar A. de Meules, Geo. S. Ramsey, Geo. S. Ramsey, Counsel for Appellant.

[fols. 612 & 613] This 3rd day of November, 1931, receipt of a copy of the foregoing definite statement of points relied upon by appellant is hereby acknowledged.

J. Berry King, Attorney General of the State of Oklahoma; E. S. Ratliff, Jess H. Ballard, John H. Miley, W. P. Z. German, Associate Counsel for Appellees. Chas. West, Counsel for the Governor of the State of Oklahoma.

[fols. 614 & 615] DESIGNATION OF RECORD TO BE PRINTED

To Hon. Charles Elmore Cropley, Clerk:

You are directed, that,

Whereas, counsel for the respective parties upon each of the foregoing appeals, have cooperated in eliminating from the record certified to and filed in this Honorable Court, all surplus and immaterial matter, it will be necessary to print the entire record including all Exhibits, as so certified and filed, omitting therefrom repetition of caption only, and the Exhibits to defendant's answer, said exhibits being included in the Volume of Exhibits and so certified.

Dated at Washington, D. C., this 28th day of October, 1931.

Harry O. Glasser, H. G. McKeever, Geo. A. Ramsey, Edgar A. deMeules, Counsel for Champlin Refining Co.

[fol. 616] [File endorsement omitted.]

[fol. 617] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1931

No. 486

DEFINITE STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed Nov. 9, 1931

Come now, Corporation Commission of the State of Oklahoma, and Paul Walker, E. R. Hughes, C. C. Childers, constituting the Corporation Commission of the State of Oklahoma, and Paul Walker, E. R. Hughes and C. C. Childers, and J. Berry King as Attorney General of the State of Oklahoma, and J. Berry King, Lewis R. Morris as County Attorney of Oklahoma County, State of Oklahoma, and Lewis R. Morris, the appellants in the above entitled cause, and state that the points upon which they intend to rely upon their cross-appeal in this Court in this cause are as follows:

1. That part of the Final Decree entered the 11th day of September, A. D. 1931, perpetually enjoining and restraining J. Berry King, Attorney General of Oklahoma, and Lewis R. Morris, County Attorney of Oklahoma County, Oklahoma, and each of them, their servants and employees, from enforcing or attempting to enforce the provisions, or any part thereof, of Section 8 of the Act of the Legis-[fol. 618] lature of Oklahoma, Session Laws 1915, page 35 (being Section 7961, Compiled Oklahoma Statutes 1921), is erroneous, and should be reversed.

2. Said Section 8 is severable from the remainder of the Act, and no prosecution having been instituted against appellee, or any of its officers, agents or employees thereunder for any direct or indirect violation of the Act, and it not having been shown that such prosecution had been threatened, no question pertaining to the interpretation of said section or its validity should have been considered or determined in this suit, and no injunction to restrain its enforcement issued.

3. The District Court, erroneously interpreted and construed said Section 8 as imposing a penalty for violation only of the Act or Statute, and not for violations of the

orders, rules and regulations of the Commission made pursuant to the Act for the purpose of carrying it into effect.

4. When the Corporation Commission has determined by proper order pursuant to the provisions of the Act the question of the amount of all crude oil and petroleum that may be produced from any common source of supply without waste, and has determined from the factors set forth in the Statute, the question of the proportion thereof that any person, firm or corporation having the right so to do, may produce; the production of crude oil and petroleum by such person, firm or corporation from such common source of supply in excess of the proportion so determined constitutes a violation of the Act within the meaning of Section 8 thereof.

[fol. 619] 5. Said Section 8 is a valid exercise of the legislative power of the State of Oklahoma, and does not deprive the appellee of his property without due process of law, or deny to him the equal protection of the law, or any right, privilege or immunity granted by the Constitutions of the United States or of the State of Oklahoma.

6. That part of the Final Decree entered on the 11th day of September, A. D. 1931, perpetually enjoining and restraining J. Berry King, Attorney General of Oklahoma, and Lewis R. Morris, County Attorney of Oklahoma County, Oklahoma, and each of them, their servants and employees, from enforcing or attempting to enforce the provisions, or any part thereof, of Section 9, of the Act of the Legislature of Oklahoma, Session Laws 1915, page 35 (being Section 7962 Compiled Oklahoma Statutes 1921), is erroneous and should be reversed.

7. Said Section 9 is severable from the remainder of the Act, and there being no pending proceeding for the appointment of a receiver of the producing properties of the appellee pursuant to the provisions of said Section 9, no question pertaining to the interpretation of said section, or its validity, should have been considered or determined in this suit, and no injunction to restrain its enforcement issued.

8. The provisions of said Section 9 for the appointment of a receiver for the operation only of producing wells and marketing the products thereof, of any person violating the provisions of the Act, by a court of competent jurisdiction

at the suit of the State, through the Attorney General, or [fol. 620] any county attorney, is not penal in character.

9. The District Court erroneously interpreted and construed said Section 9 as imposing a penalty for violations only of the Act or Statute, and not for violation of the orders, rules, and regulations of the Commission made pursuant to the Act for the purpose of carrying it into effect.

10. When the Corporation Commission has determined by proper order, pursuant to the provisions of the Act, the question of the amount of all crude oil and petroleum that may be produced from any common source of supply, without waste, and has determined from the factors set forth in the Statute the question of the proportion thereof that any person, firm or corporation having the right so to do may produce; the production of crude oil and petroleum by such person, firm or corporation from such common source of supply in excess of the proportion so determined, constitutes a violation of the provisions of the Act within the meaning of said Section 9 thereof.

11. Said Section 9 is a valid exercise of the legislative power of the State of Oklahoma and does not deprive the appellee of its property without due process of law, or deny to it the equal protection of the law, or any right, privilege or immunity granted by the Constitutions of the United States or of the State of Oklahoma.

Parts of Record to be Printed

The appellee herein is appellant in Cause No. 485, October Term 1931. Both appeals are from the same Final Decree or Order, and pursuant to statute (R. S. Sec. 1013; U. S. C. Sec. 864) only one transcript of the record has been lodged in this court. The above named appellants under- [fol. 621] stand the practice to be to print only one record to be used on both appeals. All parts of the record deemed necessary to be printed for consideration of the points above set forth have been or will be designated in connection with the record to be printed in said Cause No. 485 by the appellant therein appellee herein, and the appellants herein deem it unnecessary to reprint any further portions of the record.

If, however, appellants herein are mistaken, then they state that only the following parts of the record as filed in

this court are deemed necessary to be printed for consideration of the points set forth above, namely:

(1) Plaintiff's Third Amended and Supplemental Bill of Complaint filed by leave of Court on the 29th day of June 1931, refiled August 3, 1931, omitting the exhibits.

(2) Answer of defendants to Third Amended and Supplemental Bill of Complaint, omitting the exhibits.

(3) Findings of Fact in the cause filed on September 11, 1931.

(4) Conclusions of Law filed in the cause on September 11, 1931.

(5) Revised Opinion of the Court filed on September 1, 1931.

(6) Revised Dissenting Opinion of Judge Kennamer filed October 17, 1931.

(7) The Decree, or Order, entered on September 11, 1931.

(8) Defendants' Petition for Appeal filed on October 12, 1931.

[fols. 622 & 623] (9) Defendants' Assignment of Errors on Appeal filed October 12, 1931.

(10) Order Allowing Appeal entered October 17, 1931.

(11) Citation to Plaintiff.

Dated this 6th day of November, A. D. 1931.

J. Berry King, Attorney General of Oklahoma; E. S. Ratliff, Attorney for Corporation Commission, State of Oklahoma; W. B. German, Counsel for Appellants, by W. P. Z. German.

Service of the foregoing Definite Statement of Points to be Relied Upon and Designation of the Parts of the Record to be Printed is hereby acknowledged to have been made upon the appellee, this 6th day of November, 1931.

Horace G. McKeever, Harry O. Glasser, Edgar A. deMeules, Geo. S. Ramsey, Attorneys for Champlin Refining Company, Appellee, by Geo. S. Ramsey.

[fol. 624] [File endorsement omitted.]

CLERK'S COPY.

Vol. II

(EXHIBITS—PART 1)

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1931

No. 485

CHAMPLIN REFINING COMPANY, APPELLANT,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA AND PAUL WALKER, E. R. HUGHES, AND C. C. CHILDERS, ETC., ET AL.

No. 486

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA AND PAUL WALKER, E. R. HUGHES, AND C. C. CHILDERS, ETC., ET AL., APPELLANTS,

vs.

CHAMPLIN REFINING COMPANY

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

FILED OCTOBER 26, 1931

(36,299, 36,300)

(36,299, 36,300)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

No. 485

CHAMPLIN REFINING COMPANY, APPELLANT,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA AND PAUL WALKER, E. R. HUGHES, AND C. C. CHILDERS, ETC., ET AL.

No. 486

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA AND PAUL WALKER, E. R. HUGHES, AND C. C. CHILDERS, ETC., ET AL., APPELLANTS,

vs.

CHAMPLIN REFINING COMPANY

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

VOL. II

(EXHIBITS—PART 1)

INDEX

	Original	Print
Plaintiff's exhibits in evidence	1	1
No. 1. Aerial view Champlin Refinery.	1	2

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 28, 1931

	Original	Print
No. 7	2	2a

A map of the Oklahoma City field, showing the development therein, the location of the Champlin leases in red blocks, together with all wells drilled in said field, the structural conditions of the field indicated by contours drawn (in black lines), with a 100-foot contour interval on the top of the subsurface bed known as the Checker Board limestone.

The red line marked "approximate east limits of Wilcox sand wells" is self-defining, the red line indicating area of Arbuckle lime wells is likewise self-defining, the area included within that portion of said map between the areas so defined by said red lines being the "School Land" and the "Johnson" sand zones of the Simpson formation, of which the Wilcox sand zone is also an upper producing bed.

No. 8	3	2b

A chart consisting of a delineation of a normal vertical Ordovician (geologic system or time division of rocks), column or section, as found generally in the Oklahoma City field and throughout Oklahoma, identified as as Figure I; that said figure divides the Simpson formation into zones, with the chief lithological characteristics of each of the same.

That Figure I also indicates the upper portion of the producing Arbuckle or siliceous limestone underlying the Simpson formation with its lithologic characteristics; and

A delineation of an east-west cross-section of the Ordovician beds in the Oklahoma City field, identified as Figure 2; that said figure indicates a buried Ordovician faulted, anticlinal ridge, upon which truncation has removed the upper portion of the Arbuckle limestone near the "fault" line, indicated to the extreme right of the figure by an inclined vertical line in black, and has likewise removed progressively westward the up-tilted beds overlying the Arbuckle limestone, namely, the Johnson sand zone, the School Land sand zone, the Wilcox sand zone, and the Simpson limestone, which limestone is likewise indicated in blue color to the right of the "fault" line.

That overlying the defined plane of truncation exist a series of shales and limestones of

	Original	Print
the Pennsylvanian Age, which serve as a cap-rock to hold the oil and gas in the producing zones of the older Ordovician beds. That said figure also indicates the location and depth of the respective Champlin wells in the producing formations.		
No. 9	4	2c
A cross-section of the Oklahoma City field, drawn to scale, indicating regional geologic conditions, and important for comparison with like cross-section of the Greater Seminole area, identified herein as Plaintiff's Exhibit 10.		
No. 10	5	2d
A cross-section (east-west) of the Greater Seminole area, drawn to scale, indicating regional geologic conditions there, and important for the information that in that area (as distinguished from Oklahoma City) the Ordovician formations have accordant summits upon an elevated plateau.		
No. 11	6	3
A compilation of potentials under Corporation Commission Order No. 5413, as of January, 1931, indicating potentials assigned in said order to the respective areas therein indicated.		
No. 12	7	4a
A chart prepared by the following named committee of geologists: Glen Grimes, of Wirt Franklin Petrol. Corp.; John Van Dall, of Sinclair Oil & Gas Co.; W. W. Clawson, of Indian Terr. Illu. O. & G.; E. A. Paschal, of Colins Oil Company, and Dean McGee, of Phillips Petroleum Corp.; and as such, is intended to outline the different producing zones in the Oklahoma City field. That portion in red representing the area of the siliceous or Arbuckle lime production, that portion in blue representing the area of the lower Simpson sands below the Wilcox, and the portion in (black) representing the area of the Wilcox sand proper.		
No. 13	8	5
A list of 109 products of crude oil by trade-names or description, manufactured in the Champlin Refinery.		
No. 14	9	6
A detail of June, 1931, potentials and daily allowed production by companies, for the Greater Seminole area, subdivided into		

	Original	Print
(a) companies not owning pipe lines or refineries and having no outlet for production, except through pipe lines belonging to other companies; the companies so classified in the exhibit prepared by Ray Collins, umpire, own in the Greater Seminole area 894 wells, with a total June, 1931, potential of 225,507 barrels, with a total daily allowed production of 66,922 barrels...	9	6
(b) Companies having pipe lines in said area, connecting such production with like owned refineries, sufficient to handle their own production, own 1,351 wells, with a total June, 1931, potential of 262,595 barrels, with a total daily allowed production of 96,458 barrels..	11	8
(c) Companies having production, pipe lines, and refineries, but production so located that they have to depend, to a certain extent, upon other lines to handle part of their oil, own 196 wells with a total June, 1931, potential of 76,806 barrels, with a total daily allowed production of 15,930 barrels....	12	9
No 15.....	13	9
A summary of amounts billed and collected by the Carter Oil Company (Standard of New Jersey subsidiary) from contributors upon oil production in the Greater Seminole area only, for the account of salary and expenses of Ray M. Collins, as State-wide umpire, for the period from November 1st, 1929, to January 1st, 1931 (no part of said expense being borne by any producer outside the Greater Seminole area, Rec., p. 138). That during said period of time there was produced in said Greater Seminole area by contributors to said fund 106,944,021 barrels, upon which the producers so contributing paid $95,181.39, calculated by the application of an average percentage applied to said production.		
No. 16.....	15	11
Pipe line system serving Greater Seminole area as of June 15, 1931.		
No. 17.....	17	11
Pipe line systems and loading racks serving Oklahoma City field as of June 27, 1931.		
No. 18.....	18	12
A detail of June, 1931, potentials and daily allowed production by companies for the		

	Original	Print
Oklahoma City area, subdivided into		
(a) Companies not owning pipe lines or refineries and having no outlet for their production, except through pipe lines belonging to other companies, own 596 wells with a total potential for the period of 7,192,609 barrels, and a daily allowed production therefrom of 127,756 barrels	19	12
(b) Companies having pipe lines and refineries sufficient to handle their production, own 96 wells with a total potential for the period of 737,739 barrels, and a daily allowed production therefrom of 12,202 barrels	20	13
(c) Companies having production, pipe lines, and refineries, but production so located that they have to depend to a certain extent upon other lines to handle part of their oil, own 54 wells with a total potential for the period of 1,033,629 barrels, with a daily allowed production therefrom of 10,644 barrels	20	14
No. 19	21	14a
Total pipe line runs, Greater Seminole area, October 16, 1929, to June 1, 1931.		
No. 20	22	15
Total production and pipe line runs, Oklahoma City field (first six months 1931, the period of percentage upon potential proration) by company, lease, and well.		
No. 21	37	30
A photostat of letter written by A. B. Chesebro, assistant treasurer of The Carter Oil Company	37	30
A photostat of letter written by J. C. Denton, vice-president of Mid-Continent Petroleum Corporation	38	31
A photostat of an account stated by Burford, Miley, Hoffman & Burford	39	31
A photostat of an account stated by Earl C. Hickman (reporter)	41	33
A photostat of an account stated by Earl C. Hickman (reporter)	42	34
A photostat of an account stated by Earl C. Hickman (reporter)	43	34
No. 22	44	35
A list of the twenty out of fifty producers in the Oklahoma City field, contributing to the expense of proration in that field, with		

	Original	Print
the method of calculation and amounts of contribution by each contributing producer thereto, daily, during the month of April 21st to May 21st, 1931.		
No. 23 ..... Budget for May, 1931, Oklahoma City Producers Association.	45	36
No. 24 ..... Overs and unders, Oklahoma City pool, June 1, 1931.	46	37
No. 25 ..... A statement of the sales value f. o. b. Enid, Oklahoma, of refined products of the Champlin Refinery, July 1, 1928, to May 31, 1931.	70	78
No. 26 ..... A statement of intrastate and interstate sales by the Champlin Company of refined products and crude oil for last six months of 1928, all of 1929 and 1930, and first six months of 1931.	71	79
No. 27 ..... A statement of the costs of investment, as of May 31, 1931, in the Champlin Refinery, pipe lines, tank cars, and marketing equipment in the total sum of $11,378,151,50.	72	81
No. 28 ..... A graphic chart for the years 1920 to 1924, inclusive, drawn to scale showing (a) the purchases in Oklahoma of crude oil by the Champlin Refining Company by months; (b) the crude run in barrels to stills each month; (c) as well as the average price paid for crude so purchased.	73	82a
No. 29 ..... A graphic chart (similar to Exhibit No. 28) setting forth same data as there for years 1925 to 1930, inclusive, together with the first five months of 1931.	74	82b
No. 30 ..... A statement taken from the records in the office of the State auditor of gross production from taxable leases (as distinguished from non-taxable Indian leases) of 14 major operators in Seminole area, from January 1, 1929, to March 31, 1931, totaling 339,038,148.85 barrels.	75	83
No. 31 ..... A statement taken from the records in the office of the State auditor of gross production	76	83

	Original	Print
from all leases in the Oklahoma City field, for which gross production tax reports have been filed as required by the laws of the State of Oklahoma for the period from July 1, 1929, to March 31, 1931, totaling 44,527,836 barrels.		
No. 32	77	84a
A graph comparing Champlin's price of 39° gravity crude with the posted Prairie or Stanolind price for the years 1920 to 1931, inclusive.		

(Here follow Plaintiff's Exhibits 1, 7, 8, 9 and 10, side folios 1-5)

FOLD*OUTS ARE TOO LARGE TO BE FILMED

[fol. 6]

PLAINTIFF'S EXHIBIT 11

Oklahoma Potential and Allowable Production, January, 1931

Order No. 5413, Corporation Commission

Estimated Potential for January, 1931:

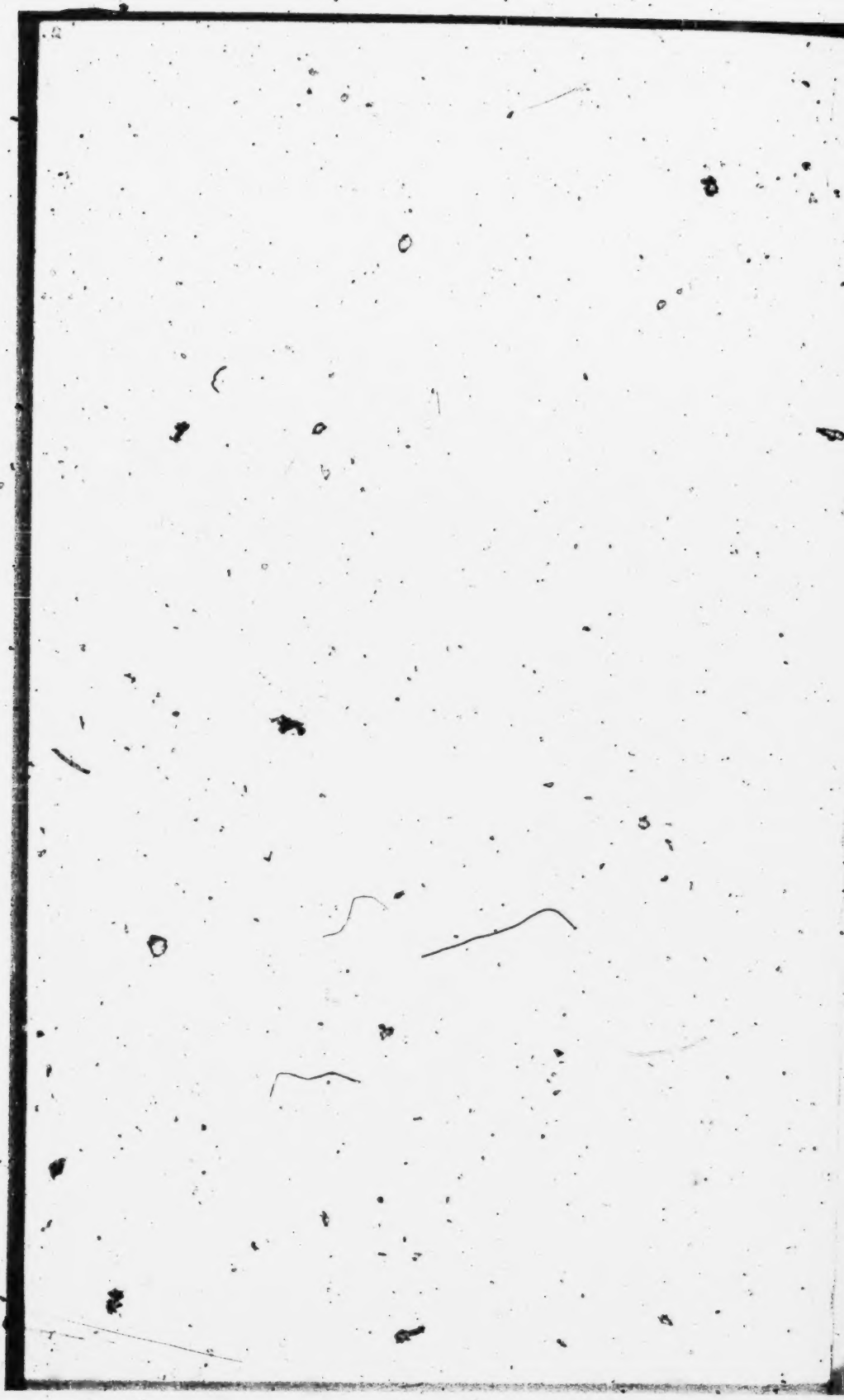
		Percent of Total
Oklahoma City	5,388,298	86.2%
Seminole	533,918	8.5%
Balance of State	330,003	5.3%
Total estimate	6,252,219	100.0%

Allowable Production for January, 1931:

Oklahoma City allowed 1.58% of its potential or	85,000	16.8%
Seminole allowed 35.3% " " " "	188,366	37.2%
Balance of State " 70.5% " " " "	232,729	46.0%
Total	506,095	100.0%

(Here follows Plaintiff's Exhibit 12, side folio 7)

FOLD-OUT IS TOO LARGE TO BE FILMED



[fol. 8] PLAINTIFF'S EXHIBIT 13

Gasoline

56-58-450 S.R.
56-58-437 S.R.
58-60-450 S.R.
58-60-437 S.R.
58-60-420 S.R.
60-62-450 S.R.
60-62-420 S.R.
60-62-410 S.R.
60-62-400 S.R.
64-66-375 S.R.
68-70-380 S.R.
68-70-360 S.R.
68-70-370 S.R.
68-70-375 S.R.
58-60 Presto (A pressure product)
60-62-430 Presto " "
60-62-420 Presto " "
60-62-410 Presto " "
64-66 Presto " "
Ethyl Gasoline

Lube Oil Stocks

100 Oil Zero to 5
1503 Lube Oil Zero to 10
200 Oil Zero to 5
2005 Lube Oil Zero to 5
2003 Oil Zero to 5
240 Oil Neutral Zero to 5
Long Residuum Zero to 5
Bright Stock Zero to 5—160 Vis.
Bright Stock Zero to 5—180 Vis.
Cylinder Stock 10-15
Cylinder Stock Zero to 5

Champlin Specialty Oils

150 Red Engine Oil
180 Red Engine Oil
200 Red Engine Oil
280 Red Engine Oil
300 Red Engine Oil
450 Red Engine Oil
500 Red Engine Oil
750 Red Engine Oil
Cream Separator Oil
T.S. Steam Cylinder 15-20
Steam Refined Cyl. Stock Vis. 235
M.S. Steam Cyl. 15-20
Rock Bit Oil
Crater Compound
Summer Black
Winter Black
433 Compressor Oil Light
433 Compressor Oil
Cooling Oil

Kerosene & Distillate

34-36 Furnace Oil
36-38 Distillate
38-40 Distillate
39-[illegible] Distillate
41-43-550
42-44-540

Fuel Oil & Gas Oil

12-14 Fuel Oil
14-16 Fuel Oil
16-18 Fuel Oil
18-22 Fuel Oil
22-26 Fuel Oil
24-26 Fuel Oil
26-28 Fuel Oil
26-30 Fuel Oil
28-30 Fuel Oil
30-32 Fuel Oil
32-36 Gas Oil
34-36 Gas Oil
35-37 Gas Oil

Champlin Motor & Tractor Oils

1365 Motor Oil Zero to 5
1460 Motor Medium Zero to 5
1650 Motor Hvy. Zero to 5
1805 Motor Ex. Hvy. Zero to 5
1860 Mtr. Sp. Ex. Hvy Zero to 5
1230 Trac. Med. Zero to 5
1660 Tractor Hvy Zero to 5
1700 Tractor Ex. Hvy Zero to 5
Tractor Deluxe Zero to 5

Greases

No. 1 Cup Grease
No. 2 Cup Grease
No. 3 Cup Grease
No. 4 Cup Grease
No. 5 Cup Grease
Summer Trans. Grease
Winter Trans. Grease
Transparent Gun Grease
Gun Grease
Gear Grease
Axle Grease Dark
Axle Grease Light
Fiber Grease
Jack Post Grease
Rotary Grease

Miscellaneous Items

Paraffin and Wax
Petrolatum
Road Oil

Champlin Specialty Oils

Castor Machine Oil
D. Stock
Floor Oil
Special Harvester Oil
Harness Oil
#650 Locomotive Valve Oil
100 Machine Oil
Roller Oil
Transformer Oil
Transmission Oil zero to 5
Summer Trans. Oil Zero to 5
Winter Trans. Oil Zero to 5
Solidified Oil.

[fol. 9] PLAINTIFF'S EXHIBIT 14

June Potentials & Daily Allowed Production by Companies

Companies Not Owning Pipe Lines or Refineries and Having No Outlet For Their Production Excepting Through The Pipe Lines Belonging to Other Companies

Page 1

Company	No. of wells	June potential	Daily allowed
Arme Drilling Company	1	108	54
Amerada Petroleum Corporation	65	31,535	10,121
Atlantic Oil Producing Company	21	1,687	844
Charles Anderson	8	5,837	750
Amos Drilling Company	3	1,965	250
Blackwell Oil Company	20	2,358	1,179
British American Oil Producing Company	5	86	43
Burke-Greis Oil Company	20	13,307	2,558
Brown-Barrett Oil Production Trust Co	2	1,273	637
J. E. Crosbie	2	535	230
Cosden, J. S., Incorporated			
Coline Oil Company	2	9,055	516
Clark & Cowden	1	226	113
Darby Petroleum Company	19	1,596	798
Earlsboro Production Trust Company #2	1	130	65
Frank Bosworth Company, J. S. Frank, Trustee	3	584	292
W. H. Gant	2	1,150	150

Company	No. of wells	June potential	Daily allowed
Gilcrease Oil Company	3	492	246
Glover & Northrup	1	105	53
Gwin Drilling Company	1	160	36
Harris, E. L.	9	2,420	781
Houston Oil Company	5	609	305
Home Gas Company of Cushing	1	173	87
Hudson, J. H.	1	435	100
Hull, J. A.	2	1,724	388
Indian Territory Illuminating Oil Co.	122	14,971	6,529
Manning & Terry, Incorporated	4	470	235
Kingwood Oil Company	3	411	206
Laurel Oil & Gas Company	3	83	42
Lesh-McCall	1	317	50
Louisiana Oil & Refining Company	41	2,789	1,395
[fol. 10] Page 2			
J. W. Merrick, Incorporated	1	1,000	100
Mid-Kansas Oil & Gas Company	13	29,858	2,805
McMahon, C. L.	6	2,060	794
Mid-Center Development Company	1	314	157
Minnehoma Oil & Gas Company	10	758	379
M. G. & R. Oil Company	2	1,606	200
Oklahoma Company	15	1,870	919
George L. Pace	1	65	50
Payne Drilling Company	7	5,271	1,186
Papoose Oil Company	1	63	32
W. B. Pine	21	5,922	2,318
Phillips Petroleum Corporation	106	10,855	5,252
Hilton Phillips	6	1,290	373
Peirce, R. H.	1	250	75
Panther Oil Company	1	131	66
Ramsey Petroleum Corporation	19	1,919	959
Sinclair Oil & Gas Company	195	24,280	11,830
Skelly Oil Company	16	6,480	3,240
Snyder & Lynch	1	56	28
Superior Oil Company	11	3,288	1,644
Slick, T. B	6	5,242	418
Signal Oil Company	3	139	70
Shaffer, C. B	9	294	147
Snowden-McSweeney Oil Company	2	71	36
Tomlinson & Palmer	1	97	49
Trevlyn Oil Company	8	4,837	750

Company	No. of wells	June potential	Daily allowed
Twin State Oil Company	15	4,819	1,574
Turman Oil Company	9	1,630	815
Westheimer-Max	26	1,505	753
Wirt-Franklin Petroleum Corporation	9	9,946	850
Wentz, Lew	.....	.....	.....
	894	225,507	66,922

[fol. 11] June Potentials & Daily Allowed Production by Companies

Companies Having Pipe Lines and Refineries Sufficient to Handle Their Own Production

Page 3

Company	No. of wells	June potential	Daily allowed
Barnsdall Oil Company	81	8,159	4,081
Carter Oil Company	168	45,866	17,359
Champlin Refining Company	9	487	244
Continental Oil Company	37	4,757	2,319
Droppleman, John	1	3,256	264
Empire Oil & Gas Company	47	15,733	5,403
Gypsy Oil Company	264	47,359	19,242
Magnolia Petroleum Company	220	50,370	12,133
Mid-Continent Petroleum Corp	112	14,475	5,974
Prairie Oil & Gas Company	220	43,491	16,628
Shell Petroleum Corp	45	10,303	4,563
Stanolind Oil & Gas Company	6	818	410
The Texas Company	111	12,805	5,480
Tidal Oil Company	30	4,716	2,358
	1,351	262,595	96,458

[fol. 12] June Potentials & Daily Allowed Production by Companies

Companies Having Production, Pipe Lines, and Refineries, but Production so Located that They Have to Depend, to a Certain Extent, Upon Other Lines to Handle Part of Their Oil.

Page 4

Company	No. of wells	June potential	Daily allowed
Deep Rock Oil Corporation	32	37,594	4,317
Eason Oil Company	5	5,740	1,554
Pure Oil Company	102	25,576	6,961
Sunray Oil Company	44	4,568	2,284
Wilcox Oil Company	13	3,328	814
	196	76,806	15,930

[fol. 13] PLAINTIFF'S EXHIBIT 15

Summary of Amounts Billed by The Carter Oil Company Account R. M. Collins Salary and Expenses as Seminole Umpire Nov. 1st, 1929—Jan. 1st, 1931

	Sheet number	Gross barrels	Average percentage	Amount
Amerada Pet. Corp.	1	5,472,337	5.4349	5,198.30
Atlantic Oil Prod. Co.	1	574,840	.5256	501.44
Chas. Anderson	1	57,151	.2359	68.64
Amos Drilling Co	1	4,325	.0238	5.45
Barnsdall Oil Co	1	2,472,168	2.2991	2,192.74
Blackwell Oil & Gas Co	2	897,513	.8280	787.86
Earlsboro Production Trust #1	2	69,382	.1355	72.12
Barrett Brown Oil Prod. Trust Co.	2	194,123	.2969	203.00
British American Oil Prod. Co.	2	81,194	.0758	72.24
Bryan & Emery	3	961	.0032	.65
Burke-Greis Oil Co	3	1,489,395	1.3890	1,317.59
J. E. Crosbie	3	430,407	.4252	403.24
Bullock Oil Co	3	221,705	.4967	243.82
R. H. Burns, et al	3	63,663	.1420	69.43
The Carter Oil Co	4	10,480,699	9.7929	9,324.41
J. S. Cosden, Inc.	4	601,966	.6486	475.51
Continental Oil Co	4	1,833,867	1.7188	1,628.08
Clark & Cowden	4	18,798	.0505	21.39
Darby Petroleum Corp.	5	657,217	.6044	575.73
Dixie Oil Co	5	96,450	.0961	92.34
Deep Rock Oil Corp. (Also see Sheet 18)		264,305	.5133	288.62
Empire Oil & Gas Co	5	2,191,554	2.0471	1,945.86
Eason Oil Co	6	753,473	.7619	726.08
Earlsboro Dev. Co	6	36,262	.0959	39.06
Gypsy Oil Co	6	11,680,426	10.8204	10,315.26
Gilcrease Oil Co	6	203,109	.1879	179.34
Frank Bosworth Co	7	91,101	.1389	95.59
Wirt Franklin Pet. Corp.	7	100,124	.4133	120.41
W. H. Gant	7	12,568	.0691	15.59
Glover and Northrop	7	3,950	.0332	5.25
Houston Oil Co. of Texas	7	181,117	.1598	152.04
Home Gas Co. of Cushing	7	6,222	.0650	4.00
Homaokla Oil Co.	7	171,116	.2433	129.56

	Sheet number	Gross barrels	Average percentage	Amount
E. L. Harris	8	359,551	.3958	321.49
Hilton-Phillips	8	602,218	.9058	622.85
J. A. Hull	8	35,184	.0937	39.83
J. H. Hudson	8	6,397	.0263	7.45
Independent Oil & Gas Co	8	3,703,550	3.3462	3,170.39
Indian Terr. Ill. Oil & Gas Co	9	3,834,531	3.5342	3,375.85
Kingwood Oil Co	9	95,499	.0874	83.95
Kiester Manning Co	9	97,389	.1129	84.73
Laurel Oil & Gas Co	9	3,710	.0390	2.40
Louisiana Oil & Ref. Co	10	784,097	.7174	683.13
V. A. Kedney, Inc	10	19,030	.0640	16.94
Mid-Kansas Oil & Gas Co	10	259,252	.2375	225.70
Magnolia Pet. Co	10	6,824,773	6.3086	6,013.77
Oklahoma Co	11	451,358	.5071	404.95
F. W. Merrick, Inc	11	12,306	.0507	14.62
M. G. and R. Oil Co	11	14,686	.0809	17.93
Mid-Continent Pet. Corp	11	4,837,459	4.7754	4,561.20
C. L. McMahon, Inc	11	293,693	.2208	288.39
Minnehoma Oil & Gas Co	12	591,356	.5171	491.07
Mid-Center Dev. Co	12	16,348	.0480	17.37
W. B. Pine	12	90,386	.9400	57.85
McMahon Oil & Gas Co	12	163,866	.1556	147.85
Phillips Pet. Co	12	379,859	.3440	323.97
Prairie Oil & Gas Co	13	10,305,765	9.5782	9,127.14
Pure Oil Co	13	5,168,992	4.7532	4,508.63
Papoose Oil Co	13	93,863	.0925	87.19
Pierce Pet. Corp	13	3,683	.0370	2.28
		80,462,139	78.7413	71,969.20
[fol. 14] Total Forward	..	80,462,139	78.7413	71,969.20
Packard Oil Co	13	5,215	.0540	3.32
Panther Oil Co	14	12,081	.0132	12.85
Reiter-Foster Oil Corp	14	107,301	.0944	88.20
Tomlinson-Palmer	14	40,972	.1113	47.60
Ramsey Pet. Corp	14	556,881	.5131	488.74
Transcontinental Oil Co	15	37,090	.0921	40.69
Shell Pet. Corp	15	5,292,829	4.8280	4,555.55
Sinclair Oil & Gas Co	15	9,573,056	8.7804	8,333.45
Trevlyn Oil Co	15	68,256	.2816	81.44
Skelly Oil Co	16	1,443,926	1.3342	1,271.16
Superior Oil Corp	16	996,713	.9214	866.57
T. B. Slick	16	157,060	.1378	129.18
Shaffer Oil & Ref. Co	16	251,485	.5364	180.44
Signal Oil Co	17	234,674	.2405	190.80
Simms Oil Co	17	217,106	.3587	164.85
Sunray Oil Co	17	945,734	.9029	864.62
C. B. Shaffer	17	79,547	.0724	68.81
Max Westheimer	17	181,247	.4798	128.19
The Texas Co	18	2,803,789	2.6298	2,497.77
Tidal Oil Co	18	1,524,740	1.3956	1,326.24
Twin State Oil Co	18	822,899	.8334	791.45
Turman Oil Co	18	504,853	.4667	443.58
Wilcox Oil & Gas Co	19	445,598	.4655	468.21
Warner-Quinlan	19	9,174	.0129	6.86
Lew Wentz	19	101,688	.0129	78.17
Deep Rock Oil Co	19	36,244	.4178	26.72
Stogner Drilling Co	19	12,643	.0578	11.46
Snowden & McSweeney Co	19	39,081	.1606	45.27
		106,944,021		95,181.39
Total Gross Production for period— Paid and unpaid		108,884,918		

[fol. 15] PLAINTIFF'S EXHIBIT 16

Pipe Line Systems Serving the General Seminole Area as of June 25, 1931

Company	Size of Line and Destination	Working capacity
Barnsdall	1-6" line to Okmulgee	10,000
Champlin	1-6" line to Enid	12,000
Consolidated	1-4" line to Sand Springs	4,500
Cosden	1-6" via Cromwell to West Tulsa	12,000
Deep Rock	2-4" to Cromwell, north to Cushing	10,000
Empire	1-6" to Okmulgee	10,000
Globe	1-4" west to Shell trunk line	4,000
Gulf	1-8" to Grayson Station	
	1-8" line to Chambers Station	45,000
Magnolia	3-6" to trunk line (one pumps east) (Macomb station discontinued)	25,000
Oklahoma	2-6" to Cromwell.	
	1-8" line to Cromwell (Electric station at Henryetta on Cromwell Council Mill line discontinued)	55,000
P. & R.	1-4" to West Tulsa	3,700
Prairie	3-8" and 3-6" lines to trunk system	110,000
Pure	1-6" to Depew connecting with Cushing-Muskogee lateral	10,000
Shell	1-6" to Stroud.	
	1-4" to Cromwell and Stroud	18,000
Standish (Phillips)	1-4" to Okmulgee (Handles gasoline from Wewoka to Okmulgee)	0
Stanolind	1-8" to Payson Station (main line, Township 12N, Range 5E).	
	1-6" to Cromwell.	
	1-4" to Cromwell.	
	2-6" to Tribbey (Main line, Township 7N, Range 2E)	72,000
[fol. 16]		
Texas-Empire	1-10" to Cushing	35,000
Texas	1-8" line to Stuart Station on trunk line (Township 5N, Range 11E)	24,000
White Oak	1-6" line to Allen	8,000
Total		468,200

CEH/GM

[fol. 17] PLAINTIFF'S EXHIBIT 17

Corporation Commission of Okla. Filed Jun. 27, 1931.

Pipe lines	Size	Capacity
Champlin	1-8"	20,000
Empire	1-8"	40,000 to 45,000
Oklahoma	1-8"	20,000
Magnolia	1-8"	26,000
Prairie	2-8"	45,000 to 50,000
Sinclair-Texas	1-12"	60,000
Stanolind	1-8"	
	1-10"	60,000
Shell	1-6"	12,500
Tidal	1-6"	7,500
Continental	1-8"	25,000
		316,000

Loading racks	Car capacity	Loading capacity	Size line
Anderson-Prichard	7	5,000	4"
Capitol Prod. & Refg. Co	12	5,000	5"
Century Petroleum	16	7,500	6"
Crude Oil Transportation	30	12,000	5"
Cushing Refining	20	5,500	6"
Gulf States	16	10,000	5"
Operators Oil Co	32	15,000	5"
I. T. I. O	26	15,000	6"
Wilcox Oil & Gas	15	15,000	6"
Coline Oil Co	50	20,000	6"
Shell Pet. Co	20	8,000	5"
Petroleum Products	12	5,000	4"
		123,000	

[fol. 18] PLAINTIFF'S EXHIBIT 18

Oklahoma City Pool

May Potentials & Daily Allowed Production by Companies

[fol. 19] June Potentials & Daily Allowed Production by Companies

Companies Not Owning Pipe Lines or Refineries and Having No Outlet for their Production Excepting Through the Pipe Lines Belonging to Other Companies.

Page 1

Company	No. of wells	May potentials	Daily allowed
Acme Oil & Gas Company	1	42,686	853
Addition Petroleum Company	1	61,940	1,229
Blackstock Oil Company	1	4,372	87
British American Oil Company	9	267,079	5,521
California Operating Company	1	3,686	73
Courter Oil Company	1	20,496	410
Chatham Oil Company	2	101,290	2,025
Coline Oil Company	34	78,227	1,564
Cromwell Franklin	31	309,670	6,193
Denver Producing & Refining Company	4	96,788	1,935
Dengail Oil & Gas Company	4	106,813	1,674
Don Leon Oil Company	2	54,336	1,086
Franco-Dominion Oil Co., Ltd	1	37,884	757

Company	No. of wells	May potentials	Daily allowed
Girt Franklin Petroleum Corporation	39	302,915	6,186
Government Petroleum Corporation	1	1,856	37
Hall & Briscoe, Inc.	2	27,208	545
I. T. I. O	290	1,858,837	35,352
Johnson-Dabney et al	1	18,770	375
Jones Brothers	2	49,230	984
Kedberg Oil Company	1	3,672	73
Mabee et al	4	168,035	3,360
Mid-Texas Petroleum Corp	1	7,288	145
Minnehoma Oil Company	1	61,475	1,229
R. A. McArthur	1	55,250	1,105
Morgan Petroleum Corp	1	24,216	484
Phillips Petroleum Co	43	1,644,392	26,790
Plains Petroleum Corp	1	5,292	105
Reynolds & Unruh	1	24,831	496
Russell Petroleum Corp	2	64,930	1,103
[fol. 20] Page 2			
Scott & Company	1		
J. C. Shaffer	5	83,767	834
Skelly Oil Company	20	274,256	5,470
Slick Urschel, Inc	80	1,122,998	19,923
Westgate Oil Company	4	148,936	570
Wrightsmith Oil Company	2	12,238	244
Watchorn Petroleum Company	1	46,950	939
Sub-Total	596	7,192,609	129,756
Companies Having Pipe Lines and Refineries Sufficient to Handle Their Own Production			
Capitol Producing & Refining Co	1	46,420	928
Champlin Refining Company	5	62,154	456
Continental Oil Company	6	34,382	685
Empire Oil & Refining Company	3	27,028	540
Marco Oil & Refining Co	1	1,248	24
Prairie Oil & Gas Co	14	51,581	1,031
Shell Petroleum Co	8	11,452	229
Sinclair Oil & Gas Company	54	398,548	7,970
H. F. Wilcox Oil & Gas Company	4	104,926	339
Sub-total	96	737,739	12,202

Companies Having Production, Pipe Lines, and Refineries, But Production so Located That They Have to Depend, to a Certain Extent, Upon Other Lines to Handle Part of Their Oil

Anderson & Pritchard	26	392,952	6,783
Blackwell Oil & Gas Co	3	55,506	1,110
Century Petroleum Corporation	5	154,046	3,103
Eason Oil Company	1	38,533	770
C. C. Julian Oil & Royalty Corp	3	10,080	201
Mid-Kansas Oil & Gas Co	8	24,863	498
Oils Incorporated	4	168,104	3,389
Sunray Oil Company	4	189,545	3,790
Sub-total	54	1,033,629	19,644
Grand total	746	8,963,977	161,602

(Here follows Exhibit 19, side folio 21)

Total Pipe Line Runs Greater Seminole District [fol. 21]

October 1922 to June 1923

Pipe Line	Greenhill Ref. Pipe Line	Champlin Ref. Pipe Line	Gulf Pipe Line	Gulf Pipe Line	Gulf Pipe Line	Magnolia Pipe Line	Oklahoma Pipe Line	Texas Pipe Line	Pure Oil Pipe Line	Shell Pipe Line	Standard Pipe Line	Sunray Pipe Line	Texas Pipe Line
[illegible] Pitchman Corp.													
[illegible] Oil Pipe Line													
Greenhill Oil Co.	[illegible]		121,198.22			1,446,532.00	10,253.77				[illegible]		[illegible]
Greenhill Oil & Gas Co.		500,249.41					9,423.00	538,400.00			[illegible]		
[illegible] Oil Pipe Co.					257,010.12			139,903.97		419,985.41	[illegible]		226,766
[illegible] Oil Pipe Co.								54,238.18			[illegible]		
[illegible] Oil Co.		52,686.24									[illegible]		
[illegible] Oil Co.					1,522,234.28						[illegible]		86,991
[illegible] Oil Co.											[illegible]		
Champlin Ref. Co.		477,573.56									[illegible]		
[illegible]		21,845.00											
[illegible] Oil Co.													
[illegible] Oil Co.						260,577.90	14,656.95						[illegible]
[illegible] Pitchman Corp.											[illegible]		
[illegible] Oil Corp.											[illegible]		
[illegible]						1,081,708.84					[illegible]		
[illegible] Pitchman Corp.											[illegible]		
[illegible] Oil Co.		33,584.16									[illegible]		
[illegible] Oil Co.		[illegible]											
[illegible] Oil & Gas Co.		4,449.76	13,444.56								[illegible]		
[illegible] Co.		82,317.24					222,404.19				[illegible]		494,347
[illegible] Oil Co.											[illegible]		
[illegible] Drilling Co.											[illegible]		
[illegible] Oil Co.			26,138.00										
[illegible]								14,892,870.00			[illegible]		[illegible]
[illegible] Co. of [illegible]											[illegible]		
[illegible] Oil Co.											[illegible]		
[illegible]			73,439.40										
[illegible] Oil Co.													
[illegible] Oil Co.							786,260.90						
[illegible] Oil & Gas Co.											[illegible]		[illegible]
[illegible] Oil & Gas Co.								41,953.66					
[illegible] Pitchman Corp.													
[illegible]											[illegible]	[illegible]	
[illegible]											[illegible]		
[illegible]											[illegible]		
[illegible]											[illegible]		
[illegible]											[illegible]		
[illegible] Oil & Gas Co.			34,721.09								[illegible]		
[illegible] Oil & Gas Co.											[illegible]		
[illegible] Co.											[illegible]		
[illegible] Oil & Gas Co.											[illegible]		
[illegible] Oil Co.													
[illegible] Drilling Co.			311,689.83								[illegible]		
[illegible] Pitchman Corp.		637,212.40											
[illegible]													
[illegible] Oil & Gas Co.													
[illegible] Oil Co.					12,201.36								
[illegible] Pitchman Corp.													
[illegible]													
[illegible] Pitchman Corp.													
[illegible] Oil Co.													
[illegible] Oil & Gas Co.			28,657.78	94,567.32	31,226.04								
[illegible] Oil Co.													
[illegible]													
[illegible]													
[illegible] Oil & Gas Co.													
[illegible] Oil Co.													
[illegible] Oil & Gas Co.													
[illegible]													
[illegible] Oil Co.		74,752.92											
[illegible] Oil Co.													
[illegible]													
[illegible] Oil Co.													
[illegible] Oil Co.													
[illegible]													
[illegible] Oil & Gas Co.			26,704.40										
Totals	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

Exhibit No 19

Record Page 173

Total Pipe Line Runs - Eastern Lemont District [fol. 21] PLAINTIFF'S EXHIBIT 19

October 1918 to June 1921

14

Exhibit No 19

Record Page 173

[fol. 22] PLAINTIFF'S EXHIBIT 20

Phones: Office 3-0648, Residence 2-4861

Ray M. Collins, 610-11 Mayo Bldg., Tulsa, Okla.

July 18, 1931.

Mr. Harry O. Glasser, Enid, Oklahoma.

DEAR SIR: I am mailing you today a statement showing the total production run by the companies under proration in the Greater Seminole area; also, runs of the pipe lines and purchasing companies of the amount of oil handled from the producers in the Greater Seminole area.

I am enclosing Mr. Otto Bradford's statement for the Oklahoma City field which shows the total production from the Oklahoma City pool for the first six months in 1931. He has given the pipe line runs, but has not stated what companies have taken the oil from the different leases. I have requested him to obtain this information and will send it to you as soon as possible. He was unable to furnish you with production or pipe line figures previous to January 1st, 1931 due to the fact that this field was operated on the "time basis" from October, 1929 to January 1st, 1931.

Yours truly, Ray M. Collins. Ray M. Collins, Empire.

RMC/EH.
Enc.

[fol. 23] Total Production and Runs—First Six Months, 1931

Oklahoma City Field

Company	Lease	Well No.	Total production first 6 months 1931	Total pipeline runs first 6 months
Acme Oil & Gas Co	Armourdale	1	138,469	130,469
Addition Pet. Corp.	Aungst	1	54,464	49,729
American Oil & Refg.	Washington Pk.	1	.....	.....
Anderson-Prichard	Brown	1	36,789	33,164
"	Clark	1	51,879	49,144
"	Gibbons	1	10,412	.....
"	"	2	2,785	.....
"	"	3	12,371	.....
"	"	4	25,548	.....
"	"	5	10,694	58,733

Company	Lease	Well No.	Total production first 6 months 1931	Total pipeline runs first 6 months	
Anderson-Prichard	Graham	1	9,119	8,283	
"	Kabeggar	1	3,366	3,815	
"	Hathaway	1	66,167	58,393	
"	Keys	1	21,046	24,030	
"	Moore	1	8,676	12,373	
"	Orphanage	1	5,722	5,399	
"	Payne	1	20,564	15,806	
"	Pest House	1	16,967	.....	
"	"	2	37,091	54,201	
"	Rayhill	1	95,141	90,984	
"	Roosevelt	1	74,246	.....	
"	"	2	43,374	.....	
"	"	3	42,559	.....	
"	"	4	24,727	.....	
"	"	5	14,569	145,179	
"	Sandnes	1	64,821	54,005	
"	Westfall	1	77,206	75,091	
"	Wilhoit	1	23,464	22,237	
"	Wilson-Carpenter	1	11,282	9,817	
"	Wright	1	76,253	69,772	
Blackstock et al	Harvey	3	20,780	22,467	
Blackwell Oil & Gas	Clemer	1	2,593	5,639	
"	Garr-Page	1	10,696	9,496	
"	Schillings	1	100,755	70,805	
British-American	Echroat	1	188,013	192,120	
"	Holmes	1	53,816	.....	
"	"	2	37,641	.....	
"	"	3	47,150	.....	
"	"	4	133,719	.....	
"	"	5	190,159	.....	
"	"	6	143,720	.....	
"	"	7	91,009	697,265	
"	Lindsay	1	24,382	47,655	
California Opr	Stout	1	18,087	15,395	
[fol. 24]					
Capitol Prod. & Refg.	Jones	1	125,741	121,256	
"	Refinery	1	714	.....	
Century Pet. Co.	Barr	1	37,688	38,082	
"	Jefferson	1	3,338	3,479	
"	McConnell	1	86,058	83,116	
"	Wheeler	1	109,459	105,949	
"	Wyatt	1	90,213	87,155	
Champlin Refining Co.	McCalep	1	115,788	57,602	As reported by Champlin Refining Company
"	Naden	1	125,005	67,756	
"	Seal	1	84,095	.....	
"	"	2	2,338	20,121	
"	Central	2	6,737	.....	
"	"	2	2,288	5,544	
"	"	3	11,353	.....	
"	Echroat	1	2,966	.....	
Chatham Oil Co.	Echroat	1	135,401	121,807	
"	Lindsay	1	192,100	166,486	
Coline Oil Co.	Clauer	1	.....	.....	
"	"	2	28,741	.....	
"	"	3	6,098	.....	
"	"	4	8,406	.....	
"	"	5	4,620	.....	
"	"	6	14,584	.....	
"	"	7	5,559	.....	

Company	Lease	Well No.	Total production first 6 months 1931	Total pipeline runs first 6 months
Coline Oil Co.	Clauer	8	2,813	.....
"	"	9	19,530	.....
"	"	10	3,082	.....
"	"	11	17,708	.....
"	"	12	4,544	.....
"	"	13	10,031	.....
"	"	14	2,181	.....
"	"	15	22,652	.....
"	"	16	8,237	170,715
"	Olds	1	4,310	.....
"	"	2	6,140	.....
"	"	3	32,542	.....
"	"	4	.....	.....
"	"	5	3,292	.....
"	"	6	2,415	.....
"	"	7	4,857	.....
"	"	8	1,889	.....
"	"	9	9,627	.....
"	"	10	10,841	.....
"	"	11	3,903	78,211
"	Warren	1	383	.....
"	"	2	1,763	.....
"	"	3	8,723	.....
"	"	4	16,398	.....
"	"	5	50	.....
"	"	7	9,822	.....
"	"	8	4,065	.....
"	"	9	6,573	53,994
Continental Oil Co.	Sudik	1	7,579	.....
"	"	2	976	.....
"	"	3	32,747	.....
"	"	5	3,979	46,653
"	Vinita Park	1	60,845	.....
"	"	2	20,931	94,305

[fol. 25]

Courter Oil Co.	White	1	5,554	5,623
Cromwell-Franklin	Trosper Park	1	2,319	.....
"	"	2	36,463	.....
"	"	3	1,459	.....
"	"	4	1,902	.....
"	"	5	938	.....
"	"	6	24,243	.....
"	"	7	17,058	.....
"	"	8	22,066	.....
"	"	9	10,292	.....
"	"	10	26,913	.....
"	"	11	121	.....
"	"	12	32	.....
"	"	13	79,628	.....
"	"	14	613	.....
"	"	15	3,463	.....
"	"	16	9,159	.....
"	"	17	57,103	.....
"	"	18	47,662	.....

Company	Lease	Well No.	Total production first 6 months 1931	Total pipeline runs first 6 months
Cromwell-Franklin	Trosper Park	19	86,441	.....
"	"	20	64,742	.....
"	"	21	87,303	.....
"	"	22	42,091	.....
"	"	23	38,357	.....
"	"	24	8,391	.....
"	"	25	78,869	.....
"	"	26	51,585	.....
"	"	27	100,964	.....
"	"	28	.....	.....
"	"	29	.....	.....
"	"	30	22,915	.....
"	"	31	54,886	.....
"	"	32	58	.....
"	"	33	24,321	.....
"	"	34	16,330	953,368
Dengail O.& G.Co.	Hile	1	82,675	70,668
"	Schillings	1	21,873	16,064
"	Woodson	1	64,063	57,145
"	Ransom	1	13,891	10,852
Denver Prod. & Refg.	Harvey	1	48,722	43,365
"	Hatfield	1	55,556	55,257
"	Whitten	1	29,391	29,196
"	Alexander	1	128,755	135,670
"	King	1	4,294	.....
Donleon Oil Co.	Hunzicker	1	150,034	150,450
"	Burt	1	.....	.....
Danciger Royalty Co.	Burris	1	4,203	.....
Empire Refg. Co.	Gustin	1	5,398	.....
"	"	2	15,922	20,853
"	Refinery Site	1	39,428	38,639
Franco-Dominion	Echroat	1	19,395	11,457
Wirt Franklin	Burge	1	11,141	13,333
"	Eacock	1	13,400	7,813
"	Holder	1	10,968	.....
"	"	2	19,153	34,932
"	Lowery	1	.....	.....
"	"	2	38,207	.....
"	"	3	59,731	.....

[fol. 26]

Wirt Franklin	Lowery	4	37,304	.....
"	"	5	239	.....
"	"	6	14,615	.....
"	"	7	40,326	.....
"	"	8	46,950	.....
"	"	9	29,137	.....
"	"	10	37,587	.....
"	"	11	26,211	345,520
"	Page	1	20,617	.....
"	"	2	16,288	.....
"	"	3	23,730	.....
"	"	4	8,973	.....
"	"	5	26,882	113,796
"	Shahan	1	8,761	.....
"	"	2	1,581	13,470
"	Schillings	1	41,669	35,453

Company	Lease	Well No.	Total production first 6 months 1931	Total pipeline runs first 6 months
Wirt Franklin	Theimer	1	75,631	.....
"	"	2	.....	.....
"	"	3	5,656	.....
"	"	4	31,708	.....
"	"	5	8,353	.....
"	"	6	14,453	.....
"	"	7	8,731	.....
"	"	8	81,761	.....
"	"	9	14,895	.....
"	"	10	8,349	.....
"	"	11	18,390	.....
"	"	12	12,372	.....
"	"	13	24,385	324,952
"	Theimer-Butterfield	1	1,364	8,646
"	Page-Tucker	1	16,075	28,523
"	Wright	1	7,276	.....
"	"	2	2,780	.....
"	"	3	32,519	52,862
Great Southern Pet	Bucher	1	3,488	.....
Hall & Briscoe	Grace	1	50,387	155,516
"	Mueller	1	34,864	34,956
Hud. Oil & Refg. Co.	R. Donivan	1	17,877	17,176
I. T. I. O. Co.	Banta	1	955	1,672
"	Barker Drake	1	22,762	23,191
"	A. Billen	1	2,049	3,115
"	A. Bodine	1	.....	.....
"	"	2	.....	.....
"	"	3	2,333	.....
"	"	4	2,373	.....
"	"	5	931	.....
"	"	6	2,411	.....
"	"	7	734	10,783
"	Bodine-Anderson	1	1,064	.....
"	"	2	.....	.....
"	"	3	532	3,036
"	S. Bodine	1	.....	.....
"	"	2	.....	.....
"	"	3	541	910
"	Border	1	7,236	9,406
"	Blvd. View	1	3,642	5,860
"	A. Brokaw	1	.....	.....
"	"	2	1,253	.....
"	"	3	241	.....
"	"	4	.....	1,205

[fol. 27]

I. T. I. O. Co.	C. Brokaw	1	661	.....
"	"	2	10,803	.....
"	"	3	35,815	.....
"	"	4	38,766	85,947
"	Butterfield	1	13,096	12,369
"	G. Button	1	.....	.....
"	"	2	.....	.....
"	G. Button	3	748	.....
"	"	4	4,692	.....
"	"	5	.....	5,197
"	Canfield Button	1	.....	.....
"	"	2	8,116	.....
"	"	3	3,778	12,144

Company	Lease	Well No.	Total production first 6 months 1931	Total pipeline runs first 6 months
I. T. I. O. Co.	Canfield	1	.....	.....
"	"	2	1,074	1,073
"	Capshaw	1	1,081	6,113
"	Carrico	1	23,861	.....
"	"	2	11,667	.....
"	"	3	33,267	.....
"	"	4	13,786	.....
"	"	5	8,176	101,557
"	Coppinger	1	29,999	.....
"	"	2	7,814	.....
"	"	3	6,169	.....
"	"	4	6,773	.....
"	"	5	10,014	.....
"	"	6	29,756	.....
"	"	7	6,868	.....
"	"	8	5,726	109,497
"	Corff Sub. Div.	1	19,723	.....
"	"	2	10,302	.....
"	"	3	11,072	.....
"	"	4	646	.....
"	"	5	29,135	81,018
"	Drake et al	1	10,530	.....
"	"	2	11,929	23,221
"	Eacock	1	4,785	.....
"	"	2	7,770	15,800
"	Earps Add	1	6,502	6,046
"	Emerson-Joyce	1	.....	.....
"	"	2	.....	.....
"	"	3	.....	246
"	N. Emerson	1	.....	.....
"	"	2	759	.....
"	"	3	2,669	.....
"	"	4	291	.....
"	"	5	7,277	.....
"	"	6	6,301	.....
"	"	7	4,229	.....
"	"	8	11,948	.....
"	"	9	.....	.....
"	"	10	89	.....
"	"	11	9,196	50,680
"	E. Farley	1	16,011	22,266
"	L. Farley	1	3,256	.....
"	"	2	163	.....
"	"	3	16,313	.....
"	"	4	65,678	84,824
"	Farley-Fuzzell	1	17,143	.....
"	"	2	41,329	63,995
"	Ferguson	1	5,729	5,250
[fol. 28]				
"	Ferndale Comm	1	64,224	.....
"	"	2	11,928	.....
"	"	3	21,451	.....
"	"	4	49,284	.....
"	"	5	7,141	.....
"	"	6	602	154,844
"	Fortson	1	252	.....
"	"	2	75	.....
"	"	3	.....	194
"	Fortson-Farley	1	388	.....
"	"	2	.....	.....
"	"	3	.....	384

Company	Lease	Well No.	Total production first 6 months 1931	Total pipeline runs first 6 months
I. T. I. O. Co.	Foster	1	209	140
"	Fox	1	15,069	17,728
"	Funk	1	28,354	33,685
"	Fuzzell	1	461	.....
"	"	2	.....	.....
"	"	3	6,494	6,911
"	George	1	2,021	2,528
"	Habeggar-Precure	1	17,974	.....
"	"	2	16,530	39,731
"	Hammer	1	4,100	.....
"	"	2	25,284	36,540
"	Haindl	1	10,579	12,589
"	Hiddleston	1	23,975	.....
"	"	2	.....	26,853
"	Holmes-Gray	1	6,511	6,501
"	Huffman	1	10,794	.....
"	"	2	11,474	26,999
"	Ivanhoe Add.	1	19,823	.....
"	"	2	3,797	28,539
"	Jennings	1	.....	.....
"	"	2	60	.....
"	"	3	838	.....
"	Johnson	1	3,534	.....
"	"	2	.....	.....
"	"	3	6,806	.....
"	"	4	15,801	.....
"	"	5	22,247	.....
"	"	6	22,474	.....
"	"	7	3,627	.....
"	"	8	1,446	.....
"	"	9	8,243	75,441
"	Jones Comm.	1	66,973	.....
"	"	2	39,561	.....
"	"	3	32,457	.....
"	"	4	12,324	155,563
"	H. W. Jones	1	27,472	.....
"	"	2	38,149	.....
"	"	3	62,304	.....
"	"	4	9,922	136,682
"	L. Jones	1	8,839	.....
"	"	2	7,442	.....
"	"	3	12,017	.....
"	"	4	3,445	.....
"	"	5	28,790	.....
"	"	6	24,424	.....
"	"	7	3,822	.....
"	"	8	1,332	.....
"	"	9	4,279	.....
"	"	10	14,915	.....
"	"	11	4,351	.....
"	"	12	22,488	.....
"	"	13	101,429	.....
"	"	14	54,743	299,358
[fol. 29]				
I. T. I. O. Co.	Mae Knox	1	44,816	.....
"	"	2	23,105	.....
"	"	3	25,059	.....

Company	Lease	Well No.	Total production first 6 months 1931	Total pipeline runs first 6 months
I. T. I. O. Co.	Mae Knox	4	31,798	125,538
"	Henning	1	.....	.....
"	"	2	.....	.....
"	"	3	.....	734
"	Lawrence Place	1	146,710	.....
"	"	2	76,285	.....
"	"	3	127,191	360,007
"	Lawton	1	9,802	.....
"	"	2	4,453	16,591
"	Lemmon	1	4,676	.....
"	"	2	14,822	.....
"	"	3	2,593	.....
"	"	4	2,842	.....
"	"	5	8,667	40,406
"	Lindsay	2	16,913	22,773
"	Mackey	1	1,158	1,320
"	Magnolia Hgts.	1	11,289	13,468
"	Mid-Texas	1	18,799	23,175
"	M K & T	1	18,791	.....
"	"	2	29,251	.....
"	"	3	48,428	.....
"	"	5	86,144	202,551
"	"	6	15,650	.....
"	Mt. Vernon Hgts.	1	6,667	8,253
"	Okla. City	1	134	.....
"	Okla. State	1	16,810	.....
"	"	2	38,268	.....
"	"	3	69,058	.....
"	"	4	66,626	.....
"	"	5	47,543	.....
"	"	6	7,987	.....
"	"	7	24,434	.....
"	"	8	59,763	342,555
"	Pasadena Hgts.	1	28,158	.....
"	"	2	12,729	.....
"	"	3	4,628	.....
"	"	4	45,666	.....
"	"	5	9,581	102,665
"	"	6	907	.....
"	Peterson	1	11,096	.....
"	"	2	35,406	.....
"	"	3	74,966	.....
"	"	4	13,037	.....
"	"	5	9,050	.....
"	"	6	62,813	.....
"	"	7	25,878	.....
"	"	8	11,897	244,411
"	Phelans Add.	1	2,782	.....
"	"	2	5,519	11,527
"	Phillips	1	60,524	60,796
"	Procure	1	30,653	30,284
"	E. Procure	1	18,170	.....
"	"	2	24,380	47,081
"	Rensimer	1	8,947	10,860
"	Reynolds	1	2,351	2,249
[fol. 30]				
I. T. I. O. Co.	Salaman	1	3,514	.....
"	"	2	.....	.....

Company	Lease	Well No.	Total production first 6 months 1931	Total pipeline runs first 6 months
I. T. I. O. Co.	Salsman	3	736	
"	"	4	6,070	
"	"	5	3,801	22,887
"	Spannagel	1	67,334	71,282
"	Spillman	1	19,476	
"	"	2	22,910	
"	"	4	15,464	59,725
"	Starkey	1	27,393	
"	"	2	19,091	50,936
"	Sudik	1	46,735	
"	"	2	55,367	
"	"	3	35,401	
"	"	4	47,851	
"	"	5	414	
"	"	6	57,698	
"	"	7	20,748	
"	"	8	48,663	
"	"	9	64,533	
"	"	10	47,507	429,015
"	Terrace Lawn	1	71,226	88,309
"	"	2	17,607	
"	Theimer	1	46,869	
"	"	2	4,241	
"	"	3	40,532	
"	"	4		
"	"	5	6,283	
"	"	6	3,691	
"	"	7	17,956	
"	"	8	4,652	125,588
"	Thos. Fuzzell	1		
"	"	2		
"	"	3		299
"	C. Trosper	1	18,663	
"	"	2	37,388	
"	"	3	46,793	
"	"	4	32,023	135,986
"	C. E. Trosper	1	28,788	30,033
"	E. Trosper	1	30,852	
"	"	2	30,597	66,935
"	H. Trosper	1	31,942	
"	"	2	40,257	
"	"	3	19,760	
"	"	4	30,933	
"	"	5	11,710	
"	"	6	5,125	
"	"	7	4,388	148,889
"	L. Trosper	1	16,167	
"	"	2	927	17,750
"	P. Trosper	1	4,308	4,290
"	Trosper-Hughes	1	23,022	23,117
"	Trosper	1		
"	"	2	40,248	
"	"	3	3,370	
"	"	4	30,009	
"	"	5		
"	"	6	2,895	
"	"	7	10,044	
"	"	8	17,139	
"	"	9	11,491	
"	"	10	24,435	
"	"	11	16,075	162,152

Company	Lease	Well No.	Total production first 6 months 1931	Total pipeline runs first 6 months
I. T. I. O. Co.	Unsell-Krager	1	32,751	.....
"	"	2	28,997	.....
"	"	3	21,753	86,355
[fol. 31]				
I. T. I. O. Co.	Unsell	1	19,321	.....
"	"	2	12,215	.....
"	"	3	5,467	.....
"	"	4	47,240	.....
"	"	5	4,477	.....
"	"	6	10,579	83,442
"	Verne	1	.....	.....
"	"	2	.....	.....
"	Viewpoint	1	87,644	.....
"	"	2	68,302	.....
"	"	3	223,296	.....
"	"	4	91,488	484,111
"	Weber Wall	1	9,877	10,908
"	Werner-Farley	1	16,499	.....
"	"	2	3,843	.....
"	"	3	11,775	38,965
"	Werner-Speegle	1	6,857	.....
"	"	2	4,051	.....
"	"	3	7,712	20,016
"	Warden	1	22,748	28,107
"	Watters	1	92	.....
"	"	2	6,959	.....
"	"	3	.....	.....
"	"	4	18,146	.....
"	"	5	7,968	.....
"	"	6	17,013	56,032
"	Wheeland	1	52,160	55,781
"	Wheeler	1	.....	.....
"	"	2	10,224	.....
"	"	3	7,649	18,590
"	Wilkie-Anderson	1	906	.....
"	"	2	.....	.....
"	"	3	5,748	10,680
"	Williams	1	19,763	19,078
"	W. Canfield	1	87,629	.....
"	"	2	14,232	104,311
"	Worley Heights	1	.....	.....
Jameson & Grimes	Fee	1	1,060	.....
Johnson-Dabney	Foote	1	30,932	20,212
Jones Brothers	Patterson	1	74,757	78,770
"	Sullivan	1	60,469	59,092
C. C. Julian-Wellman	Houser	1	5,896	6,032
"	Shepherd	1	5,289	5,552
"	Walker	1	9,256	8,595
Kedberg Oil Co.	Burris	1	34,201	28,172
Marco O & R Co.	Holder	1	.....	6,163
J. E. Mabee	Mills	1	73,258	71,381
"	Reynolds	1	93,140	66,799
"	Smith	1	211,346	210,260
"	Schillings	1	44,773	22,552
Keene-Okla.	Ohio	1	.....	.....
[fol. 32]				
R. A. McArthur	Armour	1	102,808	104,988
"	Kammerdeiner	1	6,434	.....

Company	Lease	Well No.	Total production first 6 months 1931	Total pipeline runs first 6 months
Mid-Kansas O & G	Browning	1	.....	.....
"	"	2	1,750	1,698
"	Fortson	1	5,706	.....
"	"	2	.....	.....
"	"	3	.....	.....
"	"	4	167	.....
"	"	5	98	8,006
"	Mollman	1	7,473	.....
"	"	2	30,253	.....
"	"	3	16,614	.....
"	"	4	17,676	72,176
"	Trosper Brown	1	2,411	2,937
Mid-Texas	Floral Hills	1	21,252	21,393
Minnehoma Oil Co.	Pugh	1	207,792	198,450
Morgan Pet. Corp.	Stout	1	.....	5,800
Oils Incorporated	Hathaway	1	69,095	63,418
"	Mooreland	1	6,860	5,009
"	Ross	1	160,880	157,119
"	Thompson	1	67,798	63,393
Paine & Johnson	Chapin-Levy	1	.....	.....
Okla. City Pet. Co.	Lively	1	63,775	63,599
Phillips Pet. Corp.	Ashcan	1	151,063	157,678
"	Ball	1	39,855	41,125
"	Black	1	121,501	129,075
"	Blasier	1	106,067	105,613
"	Boultinghouse	1	86,215	84,248
"	Burt	1	54,990	53,433
"	Carey	1	8,053	11,964
"	Ciger	1	220,590	218,108
"	Clayton	1	87,082	84,981
"	Crean	1	33,975	33,359
"	Damewood	1	74,158	71,932
"	Davis	1	97,197	90,946
"	Day	1	233,784	242,244
"	Dora	1	5,609	10,785
"	Forrester	1	14,381	13,259
"	Hankins	1	12,727	13,678
"	Harrell	1	7,748	9,336
"	Hatcher	1	17,059	18,606
"	Hare	1	17,325	16,329
"	Henderson	1	12,676	12,294
"	Hercheck	1	96,311	103,532
"	Higgins	1	126,348	122,189
"	Highland	1	93,160	92,750
"	"	2	11,927	11,493
"	Johnson	1	20,541	19,985
"	Jones	1	9,508	9,653
"	King	1	154,807	153,583
"	Kleinegger	1	68,838	68,175
"	Lybrand	1	180,700	185,056
"	McAusland	1	151,957	151,445
"	McBeth	1	26,084	24,737
"	Mosey	1	58,028	58,686
"	Nunn	1	139,909	118,623
"	Othenin	1	41,679	40,693
"	Perry	1	9,627	9,089
"	Rallen	1	79,500	86,255
"	Robb	1	14,430	13,926

Company	Lease	Well No.	Total production first 6 months 1931	Total pipeline runs first 6 months
[fol. 33]				
Phillips	Roden	1	222,530	174,657
"	Roose	1	24,567	27,659
"	Sam	1	12,100	11,464
"	Schillings	1	34,626	28,016
"	Temple	1	42,895	41,946
"	Unruh	1	178,632	178,300
"	Velt	1	38,038	32,965
"	Walnut Grove	1	197,711	198,751
"	Winstead	1	29,372	28,497
Plains Pet. Corp	Sadler	1	42,512	43,513
Prairie O & G Co	Hiddleston	1	4,709	.....
"	"	3	16,346	.....
"	"	4	1,015	.....
"	"	5	5,294	.....
"	"	6	16,716	.....
"	"	7	9,687	.....
"	"	9	4,222	60,356
"	Sigmon	1	14,282	.....
"	"	2	13,559	.....
"	"	3	9,998	.....
"	"	4	20,325	.....
"	"	5	8,359	.....
"	"	6	32,230	.....
"	"	7	8,016	109,423
Reynolds & Unruh	Evans	1	81,043	84,475
Russell Pet. Corp	Roosevelt	1	39,811	44,177
"	Reno	1	47,202	45,395
Scott & Co	Ashby	1	18,097	15,675
J. C. Shaffer Inc.	Arnold-Baker	1	41,212	41,301
"	Chiles	1	15,875	16,772
"	Cook-Cunningham	1	40,662	.....
"	"	2	38,100	79,521
"	Giles	1	27,477	26,671
Shell Pet. Corp	Egermeier	1	12,778	13,195
"	Petty	1	4,606	.....
"	"	2	783	.....
"	"	3	7,599	.....
"	"	4	1,370	.....
"	"	5	1,127	.....
"	"	6	5,185	.....
"	"	7	2,984	24,295
Sinclair O & G Co	Donnell	1	20,841	20,798
"	Kinter	2	.....	.....
"	"	3	.....	.....
"	"	4	.....	.....
"	"	5	.....	.....
"	"	6	.....	.....
"	"	7	13	.....
"	"	8	.....	.....
"	"	9	.....	.....
"	"	10	.....	792
"	School Land	1	.....	.....
"	"	2	11,367	.....
"	"	3	10,057	.....
"	"	4	23,744	.....
"	"	5	.....	.....
"	"	6	23,865	.....
"	"	7	8,554	.....
"	"	8	4,898	.....

Company	Lease	Well No.	Total production first 6 months 1931	Total pipeline runs first 6 months
[fol. 34]				
Sinclair O & G Co.	School Land 54	9	17,010	.....
"	"	10	59,260	.....
"	"	11	20,193	.....
"	"	12	90,753	.....
"	"	13	28,464	.....
"	"	14	40,353	.....
"	"	15	31,026	.....
"	"	16	32,346	402,440
"	#67	1	125,438	.....
"	"	2	6,125	.....
"	"	3	27,496	.....
"	"	4	71,814	.....
"	"	7	5,833	239,355
"	#69	1	60,052	.....
"	"	2	67,251	.....
"	"	3	47,524	177,534
"	Stamper	2	223	.....
"	"	3	.....	.....
"	"	4	.....	.....
"	"	5	.....	.....
"	"	6	.....	1,465
"	Vnecl	1	20,225	.....
"	"	2	3,806	.....
"	"	3	6,751	.....
"	"	4	.....	.....
"	"	5	25,507	.....
"	"	6	44,756	.....
"	"	7	1,849	.....
"	"	8	17,146	.....
"	"	9	76,124	.....
"	"	10	6,612	.....
"	"	11	45,507	.....
"	"	12	53,717	.....
"	"	13	95,510	.....
"	"	14	31,058	.....
"	"	15	94,200	.....
"	"	16	99,943	628,240
Skelly Oil Co.	Ainsworth	1	13,723	.....
"	"	2	9,820	.....
"	"	3	.....	.....
"	"	4	16,203	42,995
"	Dillon	1	11,828	.....
"	"	2	21,241	36,654
"	Dunn	1	59,519	59,012
"	Fields	1	87,477	85,398
"	Harper-Turner	1	192,192	198,616
"	Hoope	1	.....	.....
"	"	2	.....	.....
"	"	3	13,181	.....
"	"	4	19,493	.....
"	"	5	1,533	.....
"	"	6	.....	.....
"	"	7	12,648	.....
"	"	8	21,847	74,899
"	Hurt	1	267,877	278,634
"	Tanner	1	14,242	.....
"	"	2	142,982	161,452

Company	Lease	Well No.	Total production first 6 months 1931	Total pipeline runs first 6 months
[fol. 35]				
Slick-Urschel Inc.	Alexander	1	37,000	.....
"	"	2	3,241	55,171
"	Atkinson	1	33,961	.....
"	"	2	44,900	77,871
"	Bailey	1	32,502	32,850
"	Baker	1	4,940	.....
"	"	2	20,385	.....
"	"	3	8,707	.....
"	"	4	40,384	.....
"	"	5	28,705	105,638
"	Blevins	1	36,714	35,211
"	Burroughs	1	6,599	6,047
"	Campbell	1	110,764	.....
"	"	2	125,820	.....
"	"	3	227,124	464,076
"	Carter	1	25,654	25,759
"	Central	1	4,231	.....
"	"	2	3,020	8,234
"	Classen	1	12,377	.....
"	"	2	73,950	.....
"	"	3	219,013	.....
"	"	4	220,800	.....
"	"	5	587	538,779
"	Classen-Edwards	1	184,665	.....
"	"	2	1,640	.....
"	"	3	3,532	.....
"	"	4	1,675	.....
"	"	5	9,636	210,430
"	Clegg	1	33,057	.....
"	"	2	21,212	65,165
"	Crawford	1	35,993	36,569
"	Dannreuther	1	5,602	.....
"	"	2	35,777	.....
"	"	3	14,603	66,840
"	Daugherty	1	43,840	36,675
"	Dean	1	136,756	137,493
"	Dennis	1	15,816	10,598
"	Dunnivan	1	26,288	26,928
"	Egbert	1	7,995	7,255
"	Foote	1	43,775	.....
"	"	2	5,185	.....
"	"	3	16,989	67,238
"	Foote-Briscoe	1	1,705	1,590
"	Frisco	1	109,125	.....
"	"	2	33,406	.....
"	"	3	5,344	137,074
"	Frost	1	11,340	12,059
"	Frost Hgts.	1	12,820	.....
"	"	2	12,720	.....
"	"	3	4,030	.....
"	"	4	16,708	47,583
"	Gleason	1	21,553	22,872
"	Harrison	1	7,357	10,600
"	Hoops	1	.....	.....
"	"	2	5,456	.....
"	"	3	9,856	.....
"	"	4	13,581	.....
"	"	5	9,689	.....
"	"	6	6,569	.....

Company	Lease	Well No.	Total production first 6 months 1931	Total pipeline runs first 6 months
Slick-Urschel Inc.	Hoops	7	14,485	.....
"	"	8	.....	60,612
[fol. 36]				
Slick-Urschel Inc.	Houghton	1	34,769	35,077
"	Houston	1	4,447	9,015
"	Huddleston	1	13,990	23,600
"	Husaman	1	.....	.....
"	"	2	.....	.....
"	Key	1	6,377	.....
"	"	2	8,000	14,390
"	Lard	1	226,188	225,723
"	Martin	1	26,400	26,676
"	Miller	1	14,793	17,047
"	Milner	1	23,627	.....
"	"	2	26,691	52,510
"	Moore	1	1,608	3,352
"	Owens	1	102,760	95,235
"	Page	1	7,919	.....
"	"	2	9,880	28,289
"	Rodman	1	4,039	4,309
"	Storie	1	29,135	29,509
"	Terminal	1	1,501	.....
"	Thornton	1	38,825	40,583
"	Townsend	1	9,929	.....
"	"	2	792	11,443
"	Trumbly	1	16,212	16,234
"	Wepaco	1	212,507	.....
"	"	2	7,297	218,653
"	Whitfield	1	79,697	78,414
"	Wilson	1	240,041	237,370
"	Zecherle	1	2,879	6,837
Sunray Oil Co.	Mead	1	182,928	181,075
"	Olafson	1	24,451	13,309
"	R. Donivan	1	200,447	195,010
"	Twyford-Smith	1	144,758	118,999
Westgate Oil Co.	Kelsey	1	56,627	41,739
"	Carey	1	8,461	.....
"	"	2	4,777	9,214
"	Wilson	1	25,087	22,554
"	Grace	1	13,976	13,523
Watchorn Oil Co.	Traders Compress	1	7,825	.....
H. F. Wilcox	Haynes	1	8,427	8,181
"	McGinnis	1	14,835	27,491
"	Roach	1	8,909	11,630
"	Short	1	29,742	27,357
"	Wright	1	24,307	30,815
Wrightsmith Oil Co.	Smith	1	26,954	.....
"	"	2	22,709	54,616

[fol. 37] PLAINTIFF'S EXHIBIT 21

The Carter Oil Company

A. B. Chesebro

Tulsa, Oklahoma, April 14, 1931

Mr. G. A. Dye, Vice Pres., H. F. Wilcox Oil & Gas Co., Tulsa, Oklahoma,

DEAR SIR: I have your letter of April 10th, in further reference to the expense account and salary of Ray M. Collins, Umpire, and am giving you a summary of the principal items constituting his expenses, which are as follows:

Salary and expenses of six field men	$3,399.45
Salaries of 4 office employees in Tulsa	665.00
Office rent	100.00
Expense of billing & collecting by Carter Oil	150.00
Maps, office supplies, telephones, etc.	411.08
Umpire's salary	2,000.00
Umpire's personal expenses	89.80
Legal fees	3,000.00
Legal expenses	178.17
Transcripts	288.50
Total	$10,282.00

In reference to the legal fees, expenses and transcript, am attaching herewith photostatic copy of letter from Mr. J. C. Denton to Mr. Collins, under date of February 28th, to which is attached photostatic copy of bill rendered Mr. Collins by Burford, Miley, Hoffman and Burford, lawyers of Oklahoma City. Also photostatic copy covering transcript proceedings.

If there is anything further we can do for you, will you kindly advise.

Very truly yours, A. B. Chesebro, L., Assistant Treasurer.

ABC*L

[fol. 38] Mid-Continent Petroleum Corporation

General Offices: Tulsa, Okla.

Sales Offices: Chicago, Kansas City. Division Offices: St. Louis, Waterloo

February 28, 1931.

Mr. Ray M. Collins, umpire, C/o Echo Oil Company, Mayo Building, Tulsa, Oklahoma.

DEAR SIR: I received from Mr. Veasey, of the Carter Oil Company, the enclosed bill of Burford, Miley, Hoffman & Burford, 906 Hales Building, Oklahoma City, in the amount of $3,178.17, for services before the Corporation Commission, and other services extending from November, 1930 to January 31, 1931.

Mr. Burford, of course, has been employed by you in these matters with the approval of the Legal Committee. The bill, so far as I, as Chairman of the Legal Committee, am concerned, is entirely satisfactory, and I am passing the matter to you for proper handling. Mr. Veasey in his letter to me says that the bill is satisfactory.

Yours very truly, J. C. Denton, Vice-President.

JCD:G
Encs.
B81, SUB 61.

[fol. 39] Burford, Miley, Hoffman & Burford, Lawyers, 906-912 Hales Building, Oklahoma City, Okla.

John H. Miley, Roy Hoffman, Frank B. Burford, Robert M. Williams, Charles E. France. Russell V. Johnson, T. Raymond Higgins, Ralph G. Thompson, Morgan W. Eddleman

February 4, 1931.

Mr. Ray M. Collins, Umpire, c/o Echo Oil Company, Mayo Bldg., Tulsa, Okla., in account with Burford, Miley, Hoffman & Burford, November 18th, 1930, to January 31st, 1931

To services:

1930

Nov. 20. Corporation Commission—Motion Champlin et al to set aside proration order.

Dec. 1. Corporation Commission—Ancillary Order Konawa and West Asher Pools—Motion Oils Inc to set aside order.

Dec. 5. " " Motion Century Pet. Corp to set aside order.

Dec. 13. Tulsa—Conference with Legal Committee.

Dec. 16-17. Attorney General—Wilcox Receivership case.

Dec. 18-19-20. Part time U. S. Dist. Court: conferences and preparing argument Champlin et al cases.

Dec. 24-25-26. " " " " " preparing for and presenting resistance to application Century et al for temporary restraining Order—Judge Kennamer.

Dec. 28-29-30. Corp. Commission—preparation for and hearing on General Proration Order.

1931

Jan. 1- 2- 3. U. S. Dist. Court—preparation for and trial Champlin et al cases.

" 19-20-21. " " " —Reviewing 2000 pages evidence and preparing counter statement of facts.

" 22. Attorney General—conferences.
Corporation Commission—conferences.
various other conferences almost daily with various officers and interested parties
.....$3,000.00

Expense Account

1930

Dec. 13.	To trip to Tulsa re: Wilcox, Champlin et al cases	15.98
24.	" exp processing notices Dec. 29 hearing	7.00
27.	" Midwest Photo Copy Co—re: Champlin case (Photostats)	25.50
27.	" Okla. News re: hearing December 29, 1930 publication of notice	38.64

[fol. 40]

1931

January 10.	To B. R. Simpson Ct Reptr re: Champlin vs. Corp. Com.	30.00
15.	" Midwest Photo Copy Co: photostatic copies re Champlin case	.60
19.	" Midwest Photo Copy Co: photostatic copies re Champlin	59.85
"	" Midwest Photo Copy Co: photostatic copies re Champlin	.60
		$3,178.17

[fol. 41] Office of Corporation Commission of Oklahoma

Commissioners: C. C. Childers, Chairman; Fred Capshaw, E. R. Hughes. E. D. Hicks, Jr., Secretary

Oklahoma City, Okla., March 4th, 1931.

In reply refer to file—.

Mr. Ray M. Collins (State Oil Umpire), Dr., to Earl C. Hickman

For transcript of the shorthand record of the proceedings had and evidence introduced in Case No. 10,326 upon hearings duly had before Commissioners Walker, Childers, and Hughes, on the 26th and 27th days of January, 1931, and the 3rd, 4th, and 5th days of February, 1931; containing testimony of the witnesses: Wirt Franklin; Otto Bradford; J. R. Travis; H. H. Champlin; C. G. Kibbe; Leon Meillikov; Sam Lewis; B. G. Patton; L. C. Thorp; D. B. Malernee; B. R. Simpson; A. E. Walker; J. I. Gillespie; Myron D. Kinsey; G. A. Dye; E. W. Whitney; Fred Morgan; A. S. John-

son; Jake L. Hamon; Roy M. Johnson; J. B. Steele; Pat Malloy; H. G. Ellis; J. Steve Anderson; Frank Argood; Jas. A. Veasey; Robt. R. Penn; C. C. Herndon; Ray M. Collins; J. R. McWilliams $288.50

Less payment for transcript of testimony of Jas. A. Veasey; Robt. R. Penn 54.50

Balance due $234.00

Plus transcript of testimony of James A. Veasey ... 32.00

" " " " " Robt. R. Penn ... 22.50

Per request ABC 3/18/31 ..... $288.50

B81, SUB61.

[fol. 42] Office of Corporation Commission of Oklahoma

Commissioners: C. C. Childers, Chairman; Fred Capshaw, E. R. Hughes. E. D. Hicks, Jr., Secretary

Oklahoma City, Okla., February 18th, 1931.

In reply refer to file—.

Mr. Ray M. Collins (State Oil Umpire), Dr., to Earl C. Hickman

For one transcript of excerpt from the shorthand record of the proceedings had and evidence introduced in Case No. 10,326, upon hearing duly had before Commissioners Walker, Childers, and Hughes, on the 4th day of February, 1931; said transcript containing the testimony of the witness, Robt. R. Penn $22.50

O.K. R. M. C.

B81, SUB 61.

[fol. 43] Office of Corporation Commission of Oklahoma

Commissioners: C. C. Childers, Chairman; Fred Capshaw, E. R. Hughes. E. D. Hicks, Jr., Secretary

Oklahoma City, Okla., February 19th, 1931.

In reply refer to file—.

Mr. Ray M. Collins (State Oil Umpire), Dr., to Earl C. Hickman

For one transcript of excerpt from the shorthand record of the proceedings had and evidence intro-

duced in Case No. 10,326, upon hearing duly had before Commissioners Walker, Childers, and Hughes, on the 4th day of February, 1931; said transcript containing the testimony of James A. Veasey $32.00

O.K. R. M. C.

B81, SUB 61.

[fol. 44] PLAINTIFF'S EXHIBIT 22
June 18, 1931

Daily Average Production of Association Members from April 21st to May 31st, 1931

Company	Daily average		Amount
Cromwell-Franklin Oil Co.	6,726.48	.02290565	$154.07
Chatham Oil Company	1,767.15	"	40.48
Mid-Kansas Oil & Gas Co.	578.	"	13.24
Denver Pro. & Ref. Co.	1,961.	"	44.92
Dengail Oil & Gas Co.	1,889.	"	43.27
H. L. Briggs	1,479.12	"	33.88
Shell Pet. Corp.	269.48	"	6.17
J. C. Shaffer, Inc.	1,080.61	"	24.75
Prairie Oil & Gas Co.	1,161.	"	26.59
Continental Oil Co.	338.5	"	7.75
Wirt Franklin Pet. Corp.	4,794.76	"	109.83
Skelly Oil Co.	6,318.15	"	144.65
Minnehorn Oil & Gas Co.	1,253.48	"	28.71
Slick-Urschel, Inc.	19,393.73	"	444.23
Indian Terr. Ill. Oil Co.	35,948.	"	823.41
British-American Oil Pro. Co.	5,892.9	"	134.98
Capitol Pro. & Ref. Co.	968.36	"	22.18
Empire Oil & Ref. Co.	568.	"	13.02
Phillips Pet. Co.	26,470.	"	606.82
Anderson-Prichard Oil Corp.	6,599.	"	151.15
Totals	125,453.72		$2,873.60

[fol. 45] PLAINTIFF'S EXHIBIT 23

Oklahoma City Producers Association, 501 Franklin Building, Oklahoma City

June 18, 1931

Budget for Month of May, 1931, Umpire's Office

Otto B. Bradford, Umpire	Salary	$600.00
Edna Bryant	Salary	175.00
Mrs. W. C. Morgan	Salary	125.00
Velma Johnston	Salary	110.00
Camille Byers	Salary	100.00
Gladys Roberts	Salary	110.00
Jas. L. Chenault	Salary & 1/2 Mo. Car. Ex	200.00
A. E. Black	Salary & Car Expense	225.00
J. G. Courtland	Salary & Car Expense	200.00
E. M. Keeler	Salary & Car Expense	225.00
E. G. Dahlgren	Salary	175.00
H. B. Davidson	Salary & Car Expense	225.00
Frank Cosan	Salary	175.00
Margaret Floyd	1 Day Extra Work	4.50
Wirt Franklin	Rent	100.00
United States Post Office	Stamps	25.00
United States Post Office	Deposit on Envelopes	8.64
Lampe Letter Company	Mimeographing	96.00
Oklahoma Club	Producers Meeting	28.45
Columbia Carbon Company	Supplies	3.50
Batten Floral Company	Basket Flowers Burford	25.00
Adams Engineering & Blue Print Co.	Photostats	52.85
Schiff-Mayer Company	Office Supplies	36.60
Industrial Printing Co	Daily Reports	19.75
Remington Rand Business Service	Supplies	1.25
Mid-West Photo Shop	Photostats & Reports	94.20
Automobile List Bureau	Mimeographing	35.00
Wirt Franklin Pet. Corp	Gas & Oil, Scout Car	10.00
Parrott Motor Company	Repairs, Scout Car	62.52
Western Union Telegraph Co	May Account	16.07
Southwestern Bell Tel. Co.	Phone 7-5603	111.03
	7-5604	16.28
	7-4802	19.13
Ditto Inc	Supplies	1.00
Riley, Hoffman, Williams & France	Attorney Fees	1,184.86
Total		$4,596.63
Less Credit of Back Dues from New Members		1,723.03
Total		$2,873.60

Approved by Otto B. Bradford, Umpire.

[fol. 46]

PLAINTIFF'S EXHIBIT 24

Overs and Unders, Oklahoma City Pool, 7:00 A. M., June 1, 1931

Explanation

Potent.....Potential
Ten. All.....Tentative Allowable
Est.....Estimated Potential
Old.....Old Potential

[fol. 47]

Page 1

Well	No.	Potent.	Ten. All. for May	May, 1931 Over	May, 1931 Under	Net. Ten. Allow.	Actual May Prod.	June 1, 1931 Over	June 1, 1931 Under
			Acme Oil & Gas Co.						
Armourdale	1	42,686	26,466	.....	14,873	41,339	41,835	496	.....
Totals		42,686	26,466	.....	14,873	41,339	41,835	496	.....
			Addition Petroleum Co.						
Aungst	1	51,196 Est.	10,197	10,197	.....	.....	.....	.....	.....
		61,940	27,920	.....	.....	27,920	25,567	.....	2,353
Totals		61,940	38,117	10,197	.....	27,920	25,567	.....	2,353
			Anderson & Pritchard						
Brown	1	10,801	6,696	.....	2,174	8,870	8,218	.....	652
Clark	1	25,818	16,007	.....	6,695	22,701	22,612	.....	89
M. Gibbons	1	3,313	2,054	97	.....	1,957	1,080	.....	877
"	3	3,434	2,129	620	.....	1,509	1,651	142	.....
"	4	12,744 Est.	2,513	2,513	.....	.....	.....	.....	.....

Well	No.	Potent.	Ten. All. for May	May, 1931 Over	May, 1931 Under	Net. Ten. Allow.	Actual May Prod.	June 1, 1931 Over	June 1, 1931 Under
M. Gibbons	..	19,413	8,463	.....	.....	8,463	7,657	.....	806
"	5	3,282	2,035	.....	233	2,268	2,122	.....	146
Graham	1	2,704	1,676	.....	62	1,738	1,770	32	.....
Habeggar	1	1,006	624	.....	533	1,157	1,044	.....	100
Hathaway	1	34,928	21,656	822	.....	20,834	21,397	563	.....
Keys	1	6,044	3,747	.....	72	3,819	4,634	815	.....
Moore	1	2,534	1,571	.....	253	1,824	1,791	.....	33
Orphanage	1	1,544	957	.....	1,298	2,255	861	.....	1,394
Payne	1	27,708 Est.	3,464	4,618	.....	−1,154	.....	1,154	.....
Pesthouse	1	5,269	3,269	68	.....	3,201	3,446	245	.....
"	2	11,750	7,285	.....	1,076	8,361	8,511	150	.....
Rayhill	1	42,496	26,348	2,010	.....	24,338	24,910	572	.....
Roosevelt	1	7,121	4,415	.....	73	4,488	4,967	479	.....
"	2	12,532	7,770	256	.....	7,514	7,774	260	.....
"	3	12,593	7,807	74	.....	7,733	7,507	.....	226
"	4	6,804	4,218	.....	253	4,471	3,739	.....	732
"	5	4,140	2,567	.....	377	2,944	2,396	.....	548
Sandness	1	38,745	24,021	2,160	.....	21,861	22,060	199	.....
Westfall	1	36,718	22,765	.....	19,692	42,457	42,079	.....	372
Wilhoit	1	34,194 Est.	2,631	5,662	.....	−3,031	.....	3,031	.....
Wilson-Carpent	1	4,032 Est.	2,500	.....	13,414	15,914	.....	.....	15,914
Wright	1	34,029	21,098	.....	803	21,901	21,526	.....	375
Totals		392,952	210,286	18,900	47,007	238,393	223,752	7,642	22,283
			Blackstock Oil Co.						
Harvey	3	4,372	2,710	5,525	.....	−2,815	3,967	6,782	.....
Totals		4,372	2,710	5,525	.....	−2,815	3,967	6,782	.....

Well	No.	Potent.	Ten. All. for May	May, 1931 Over	May, 1931 Under	Net. Ten. Allow.	Actual May Prod.	May 1, 1931 Over	May 1, 1931 Under
Blackwell Oil & Gas Co.									
Clemer	1	4,212 Est.	2,611	4,356	.....	−1,745	.....	1,745	.....
Garr Page	1	8,724 Est.	5,409	5,980	.....	−571	.....	571	.....
Schillings	1	42,570	26,393	273	.....	26,120	26,−22	2	.....
Totals		55,506	34,413	10,609	.....	23,804	26,122	2,318	.....
British American Oil Co.									
Eckroat	1	51,736	32,076	.....	90	32,166	32,029	.....	137
Holmes	1	15,014	9,308	.....	75	9,383	9,357	.....	26
"	2	10,452	6,481	.....	206	6,687	6,677	.....	10
"	3	9,971	6,182	.....	3,648	9,830	9,823	.....	7
"	4	51,106	31,685	.....	122	31,807	31,793	.....	14
"	5	51,242	31,770	.....	2,708	34,478	34,455	.....	23
"	6	49,749	30,844	.....	5,036	35,880	35,863	.....	17
"	7	29,581	18,340	.....	1,004	19,344	19,344	.....	.....
Lindsey	1	7,228	4,482	.....	50	4,532	4,481	.....	51
Totals		267,079	171,168	.....	12,939	184,107	183,822	.....	285

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Well	No.	Potent.	Ten. All. for May	May, 1931 Over	May, 1931 Under	Net. Ten. Allow.	Actual May Prod.	May 1, 1931 Over	May 1, 1931 Under
California Operating Co.									
Stout	1	3,686	2,285	11,234	.....	−8,949	.....	8,949	.....
Totals		3,686	2,285	11,234	.....	−8,949	.....	8,949	.....
Capitol Producing & Refining Co.									
Jones	1	46,420	28,780	685	.....	28,095	22,322	.....	5,773
Totals		46,420	28,780	685	.....	28,095	22,322	.....	5,773

Century Petroleum Corp.

Well	No.	Potent.	May, 1931 Ten. All. for May	May, 1931 Over	May, 1931 Under	Net. Ten. Allow.	Actual May Prod.	May 1, 1931 Over	May 1, 1931 Under
Barr	1	17,046	10,569	.....	453	11,022	11,196	174	.....
Jefferson	1	6,480 Est.	3,108	3,108	.....	.....	.....	.....	.....
"		5,058	730	.....	.....	730	796	66	.....
McConnell	1	45,394	28,144	.....	4,787	32,931	34,029	1,098	.....
Wheeler	1	43,625	27,047	.....	1,862	28,909	31,777	2,868	.....
Wyatt	1	42,923	26,612	.....	3,051	29,663	30,296	633	.....
Totals		154,046	96,210	3,108	10,153	103,255	108,094	4,839	.....

Courter Oil Company

White	1	20,496 Est.	.....	.....	.....	.....	5,554	5,554	.....
Totals		20,496	.....	.....	.....	.....	5,554	5,554	.....

Champlin Refining Co.

McCalep	1	11,649	7,222	.....	8,234	15,456	5,877	.....	9,579
Naden	1	9,916	6,148	.....	14,592	20,740	4,880	.....	15,860
Seal	1	441	273	5,619	.....	−5,346	3,168	8,514	.....
Seal	2	818	507	1,214	.....	−707	97	804	.....
Central	3	39,330 Est.	.....	.....	.....	.....	4,798	4,798	.....
Totals		62,154	14,150	6,833	22,826	30,143	18,820	14,116	25,439

Chatham Oil Company

Eckroat	1	51,559	31,966	.....	251	32,217	31,888	.....	329
Lindsey	1	49,731	30,833	.....	103	30,936	30,869	.....	67
Totals		101,290	62,799	.....	354	63,153	62,757	.....	396

Coline Oil Company

Clauer	1	1,626 Est.	1,008	15,077	.....	−14,069	.....	14,069	.....	.....
"	2	574	356	340	.....	16	.....	.....	.....	16
"	3	1,713	1,062	.....	46	1,108	1,105	.....	.....	3
"	4	2,432	1,508	11	.....	1,497	1,497	.....	.....	.....
"	5	1,430	887	.....	35	922	917	.....	.....	5
"	6	4,204	2,607	.....	112	2,719	2,707	.....	.....	12
"	7	1,760	1,091	.....	49	1,140	1,138	.....	.....	2
"	8	835	518	.....	25	543	553	10	.....	.....
"	9	5,722	3,547	3	.....	3,544	3,504	.....	.....	40
"	10	912	565	.....	2	567	587	20	.....	.....
"	11	4,053	2,513	1,079	.....	1,434	1,436	2	.....	.....
"	12	1,507	934	.....	39	973	971	.....	.....	2
"	13	1,788	1,108	.....	51	1,159	1,155	.....	.....	4
"	14	691	429	.....	13	442	443	1	.....	.....
"	15	7,066	4,381	5	.....	4,376	4,373	.....	.....	3
"	16	3,439 Old	2,132	4,276	.....	−2,144	−373	1,771	.....	.....
Olds	1	1,191	738	32	.....	706	698	.....	.....	8
"	2	1,948	1,208	1	.....	1,207	1,195	.....	.....	12
"	3	9,829	6,094	8	.....	6,086	6,103	17	.....	.....
"	5	1,057	655	15	.....	640	641	1	.....	.....
"	6	765	474	2	.....	472	476	4	.....	.....
"	7	1,241	769	.....	20	789	777	.....	.....	12
"	8	599	371	.....	15	386	385	.....	.....	1
"	9	2,712	1,682	.....	73	1,755	1,757	2	.....	.....
"	10	3,248	2,013	.....	88	2,101	2,099	.....	.....	2
"	11	1,104	685	.....	20	705	693	.....	.....	12
Warren	1	253	157	.....	353	510	337	.....	.....	173
"	2	1,800 Est.	1,116	965	.....	151	.....	.....	.....	151

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Well	No.	Potent.	Ten. All. for May	May, 1931 Over	May, 1931 Under	Net. Ten. Allow.	Actual May Prod.	May 1, 1931 Over	May 1, 1931 Under
Warren	3	1,925	1,194	.....	49	1,243	1,247	4	.....
"	4	3,920	2,430	.....	22	2,452	2,475	23	.....
"	5	1,008 Est.	625	6,229	.....	−5,604	.....	5,604	.....
"	7	2,938	1,822	.....	70	1,892	1,658	.....	234
"	8	1,062	659	.....	606	1,265	1,273	8	.....
"	9	1,875	1,162	.....	32	1,194	1,196	2	.....
Totals		78,227	48,509	28,043	1,720	22,177	43,023	21,538	692
Continental Oil Company									
Sudik	1	961	596	1,501	.....	−905	428	1,333	.....
"	2	605 Est.	375	1,854	.....	−1,479	746	2,225	.....
"	3	9,029	5,528	502	.....	5,026	3,904	.....	1,122
"	5	450	279	.....	64	343	279	.....	64
Vinita Park	1	17,895	11,095	.....	2,130	13,225	10,882	.....	2,343
"	2	5,442	3,374	.....	832	4,206	5,716	1,510	.....
Totals		34,382	21,247	3,857	3,026	20,416	21,955	5,068	3,529
Cromwell Franklin									
Trosper Park	1	35 Est.	22	2,579	.....	−2,557	.....	2,557	.....
"	2	10,592	6,567	45	.....	6,522	6,239	.....	283
"	3	645 Est.	400	938	.....	−538	.....	538	.....
"	4	366 Est.	227	881	.....	−654	592	1,246	.....
"	5	220 Est.	136	1,989	.....	−1,853	.....	1,853	.....
"	6	9,936 Est.	6,160	.....	15,983	22,143	12,599	.....	9,544
"	8	6,111	3,789	.....	1,219	5,008	5,101	93	.....

"	9	4,798 Old.	2,975	.....	363	3,338	336	.....	3,002
"	10	8,200	5,084	.....	1,464	6,548	.....	.....	6,548
"	11	1,272 Est.	789	.....	1,188	1,977	.....	.....	1,977
"	12	588 Est.	365	.....	1,039	1,404	.....	.....	1,404
"	13	24,390	15,122	.....	2,063	17,185	12,095	.....	5,090
"	14	1,794 Est.	1,112	.....	576	1,688	.....	.....	1,688
"	15	535 Est.	332	2,658	.....	−2,326	577	2,903	.....
"	16	1,064 Est.	660	1,420	.....	−760	2,327	3,087	.....
"	17	16,810	10,422	61	.....	10,361	9,988	.....	373
"	18	14,423	8,942	.....	17,303	26,245	26,269	24	.....
"	19	25,729	15,952	.....	166	16,118	−147	.....	16,265
"	20	19,428	12,045	.....	12,314	24,359	23,992	.....	367
"	21	26,230	16,262	.....	27	16,289	−281	.....	16,570
"	22	19,908 Old.	12,343	.....	28,357	40,700	7,126	.....	33,574
"	23	11,457	7,103	.....	70	7,173	6,084	.....	1,089
"	24	2,220	1,377	.....	706	2,083	1,984	.....	99
"	25	24,144	14,969	.....	2,949	17,918	17,718	.....	200
"	26	14,964	9,278	.....	12,217	21,495	25,715	4,220	.....
"	27	31,377	19,454	71	.....	19,383	47	.....	19,336
"	30	6,787	4,208	.....	1,139	5,347	3,601	.....	1,746
"	31	9,715	6,023	.....	1,628	7,651	7,750	99	.....
"	32	464 Est.	288	.....	638	926	.....	.....	926
"	33	10,331 Old:	6,405	.....	6,607	13,212	.....	.....	13,212
"	34	5,137	3,185	.....	3,950	7,135	−15	.....	7,150
Totals		309,670	191,996	10,642	112,166	293,520	169,697	16,620	140,443

Denver Producing & Refining Co.

Alexander	1	47,355	29,360	1,404	.....	27,956	27,955	.....	1
Harvey	1	15,420	9,560	111	.....	9,449	9,090	.....	359
Hatfield	1	24,119	14,954	.....	816	15,770	15,771	1	.....
Whitten	1	9,894	6,135	.....	6	6,141	5,972	.....	169
Totals		96,788	60,009	1,515	822	59,316	58,788	1	529

Dengail Oil & Gas Co.

Well	No.	Potent.	May, 1931 Ten. all. for May	Over	Under	Net. Ten. Allow.	Actual May Prod.	May 1, 1931 Over	Under
Schillings	1	3,178 Old.	1,970	11,763	.....	−9,793	3,553	13,346	.....
Hile	1	47,455	29,422	.....	1,619	31,041	17,437	.....	13,604
Ranson	1	23,096 Est.	.....	2,887	.....	−2,887	11,004	13,891	.....
Woodson	1	33,084	20,512	.....	7,629	28,141	23,895	.....	4,246
Totals		106,813	51,904	14,650	9,248	46,502	55,889	27,237	17,850

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Don Leon Oil Co.

Burt	1	41,408 Est.	.....	.....	.....	.....	5,176	5,176	.....
Hunsicker	1	54,336	33,688	.....	282	33,970	33,835	.....	135
Totals		54,336	33,688	.....	282	33,970	39,011	5,176	135

Eason Oil Co.

Lively	1	38,533	23,890	6,467	.....	17,423	19,572	2,149	.....
Totals		38,533	23,890	6,467	.....	17,423	19,572	2,149	.....

Empire Oil & Refining Co.

Gustin	1	1,739	1,078	.....	42	1,120	1,046	.....	74
	2	6,235	3,866	.....	418	4,284	4,249	.....	35
Refinery Site	1	19,054	11,814	5	.....	11,809	11,789	.....	20
Totals		27,028	16,758	5	460	17,213	17,084	.....	129

Franco-Dominion Oil Co., Ltd.

Eckroat	1	37,884 Est.	23,488	6,314	.....	17,174	.....	.....	17,174
Totals		37,884	23,488	6,314	.....	17,174	.....	.....	17,174

Wirt Franklin Petroleum Corp.

Burge	1	3,125	1,938	.....	3,819	5,757	5,954	197	.....
Eacock	1	5,004 Est.	3,102	.....	10,296	13,398	3,143	.....	10,255
Holder	1	2,804	1,738	.....	364	2,102	.....	.....	2,102
"	2	4,662	2,890	.....	649	3,539	.....	.....	3,539
Lowery	2	11,130	6,901	.....	166	7,067	7,106	39	.....
"	3	17,804	11,038	.....	19	11,057	11,118	61	.....
"	4	10,993	6,816	22	.....	6,794	6,821	27	.....
"	5	9,722 Est.	6,028	.....	13,441	19,469	.....	.....	19,469
"	6	567	352	7,255	.....	−6,903	−90	6,813	.....
"	7	14,666	9,093	98	.....	8,995	9,199	304	.....
"	8	13,965	8,658	6	.....	8,652	8,733	81	.....
"	9	7,756	4,809	.....	97	4,906	4,686	.....	220
"	10	10,317	6,396	546	.....	5,850	5,490	.....	360
"	11	8,821	5,469	.....	7	5,476	5,414	.....	62
Page	1	5,271	3,268	.....	68	3,336	3,415	79	.....
"	2	3,487	2,162	.....	107	2,269	2,269	.....	.....
"	3	7,254	4,498	.....	186	4,684	4,723	39	.....
"	4	2,525	1,565	.....	100	1,665	1,615	.....	50
"	5	7,071	4,384	.....	192	4,576	4,564	.....	12
Schillings	1	37,356 Est.	12,071	8,678	.....	.....	.....	.....	.....
"	2	33,095	10,200	.....	.....	13,593	11,812	.....	1,781
Shahan	1	2,610	1,618	.....	51	1,669	1,658	.....	11
"	2	1,542 Old.	956	.....	1,178	2,134	.....	.....	2,134
Theimer	1	22,673	14,057	116	.....	13,941	14,294	353	.....
"	2	269 Est.	167	.....	1,562	1,729	.....	.....	1,729
"	4	9,109	5,648	132	.....	5,516	5,756	240	.....
"	5	3,238	2,008	598	.....	1,410	1,487	77	.....
"	6	3,870 Est.	2,399	.....	17,463	19,862	1,623	.....	18,239
"	7	1,764 Old.	1,094	2,683	.....	−1,589	2,408	2,997	.....
"	8	24,860	15,413	171	.....	15,242	15,914	672	.....
"	9	11,886 Est.	7,369	.....	27,794	35,163	.....	.....	35,163
"	10	2,641	1,637	116	.....	1,521	1,724	203	.....
"	11	5,358	3,322	79	.....	3,243	3,346	103	.....
"	12	3,597	2,230	886	.....	1,344	1,437	93	.....
"	13	8,316	5,156	.....	88	5,244	4,661	.....	583

Well	No.	Potent.	Ten. All. for May	May, 1931 Over	May, 1931 Under	Net. Ten. Allow.	Actual May Prod.	May 1, 1931 Over	May 1, 1931 Under
Tehimer-Butt	1	3,566 Est.	2,211	2,613	.....	−402	.....	402	.....
Page Tucker	1	4,319	2,678	.....	155	2,833	3,049	216	.....
Wright	1	1,611	999	.....	7	1,006	1,062	56	.....
"	2	661	410	68	.....	342	74	.....	268
"	3	14,583	9,041	.....	15,066	24,107	−58	.....	24,165
Totals		302,915		24,067		260,597		13,952	
			191,789		92,875		154,407		120,142

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Government Petroleum Corp.

Government	1	1,856 Est.	1,151	.....	3,077	4,228	.....	.....	4,228
Totals		1,856 Est.	1,151	.....	3,077	4,228	.....	.....	4,228

Hall & Briscoe, Inc.

Grace	1	18,564 Est.	11,510	206,983	.....	−195,473	.....	195,473	.....
Mueller	1	8,644	5,359	.....	2,052	7,411	7,274	.....	137
Totals		27,208	16,869	206,983	2,052	−188,062	7,274	195,473	137

I. T. I. O. Co.

Banta	1	660	409	.....	14,938	15,347	215	.....	15,132
Barker-Drake	1	6,442	3,994	.....	28	4,022	3,991	.....	31
A. Billen	1	488 Est.	303	3,826	.....	−3,523	−16	3,507	.....
A. Bodine	2	903 Est.	560	1,579	.....	−1,019	.....	1,019	.....
"	3	498 Est.	327	327	.....	.....	.....	.....	.....
		2,452	730	.....	.....	730	724	.....	6
"	4	2,333 Est.	1,013	1,013	.....	.....	.....	.....	.....
		2,492	741	.....	.....	741	770	29	.....

"	5	377	234	.....	183	417	136	.....		281
"	6	692	429	20	.....	409	409	.....	.....	.....
"	7	629	390	.....	462	852	.....	.....		852
B. Anderson	1	252	156	.....	46	202	204	.....	2	.....
"	2	27 Est.	17	.....	296	313	−5	.....		318
"	3	220	136	.....	199	335	121	.....		214
S. Bodine	3	377	234	.....	327	561	−15	.....		576
E. Border	1	2,171	1,346	2	.....	1,344	1,386	.....	42	.....
Blvd. View	1	1,844	1,143	.....	47	1,190	−23	.....		1,213
A. Brokaw	2	3,072 Est.	1,905	.....	6,720	8,625	942	.....		7,683
"	3	144 Est.	89	.....	722	811	.....	.....		811
"	4	32 Est.	20	48	.....	−28	.....	.....	28	.....
C. Brokaw	1	2,894	1,794	.....	8,404	10,198	661	.....		9,537
"	2	3,641	2,257	.....	6,352	8,609	840	.....		7,769
"	3	7,095	4,399	.....	1,878	6,277	6,231	.....	.....	46
"	4	12,814	7,944	273	.....	7,671	7,694	.....	23	.....
Butterfield	1	7,796 Est.	4,834	.....	6,299	11,133	966	.....		10,167
Button	1	37 Est.	23	1,238	.....	−1,215	.....	.....	1,215	.....
"	2	124 Est.	77	.....	454	531	.....	.....		531
"	3	360 Est.	223	.....	237	460	.....	.....		460
"	4	1,163	721	.....	1	722	697	.....		25
"	5	930 Est.	577	1,949	.....	−1,372	.....	.....	1,372	.....
C-Button	1	264 Est.	164	.....	831	995	.....	.....		995
"	2	1,305	809	.....	4,520	5,329	3,162	.....		2,167
"	3	1,116	692	16	.....	676	574	.....		102
L. Canfield	1	408 Est.	253	.....	1,113	1,366	.....	.....		1,366
"	2	755 Est.	468	.....	870	1,338	.....	.....		1,338
Capshaw	1	1,142 Est.	618	618	.....	.....	.....	.....	.....	.....
		887	501	.....	.....	501	497	.....		4
Carrico	1	5,508	3,415	1,095	.....	2,320	2,327	.....	7	.....
"	2	3,338	2,069	12	.....	2,057	2,035	.....		22
"	3	9,756	6,049	3	.....	6,046	6,026	.....		20
"	4	3,944	2,446	2	.....	2,444	2,423	.....		21
"	5	2,381	1,476	.....	4	1,480	1,458	.....		22
Coppinger	1	8,029	4,978	.....	4,170	9,148	6,388	.....		2,760
"	2	840 Old.	521	5,878	.....	−5,357	−31	5,326	.....	

Well	No.	Potent.	Ten. All. for May	May, 1931 Over	May, 1931 Under	Net. Ten. Allow.	Actual May Prod.	May 1, 1931 Over	May 1, 1931 Under
Coppinger	3	1,821	1,129	.....	3	1,132	1,143	11	.....
"	4	3,113 Old.	1,930	267	.....	1,663	84	.....	1,579
"	5	2,924	1,813	16	.....	1,797	1,792	.....	5
"	6	3,836 Old.	2,378	11,725	.....	−9,347	8,351	17,698	.....
"	7	2,044	1,267	.....	56	1,323	1,294	.....	29
"	8	2,892	1,793	.....	1,572	3,365	1,263	.....	2,102
Corff-Sub	1	6,068	3,762	.....	3	3,765	3,765	.....	.....
"	2	3,081	1,910	.....	16	1,926	1,930	4	.....
"	3	3,548	2,200	.....	3	2,203	2,201	.....	2
"	4	774 Old.	480	.....	1,721	2,201	55	.....	2,146
"	5	8,356	5,181	1	.....	5,180	5,134	.....	46
Drake	1	2,941	1,825	.....	33	1,906	1,886	.....	20
"	2	3,268	2,026	7	.....	2,019	1,980	.....	39

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Eacock	1	1,354	839	.....	47	886	887	1	.....
"	2	2,241	1,389	.....	97	1,486	1,455	.....	31
Earps Add	1	5,328 Est.	2,589	2,767	.....	−178	62	240	.....
N. Emerson	1	60 Est.	37	839	.....	−802	.....	802	.....
"	2	220	136	.....	.....	136	136	.....	.....
"	3	794	492	.....	259	751	435	.....	316
"	4	23	14	52	.....	−38	.....	38	.....
"	5	2,427	1,505	2	.....	1,503	1,487	.....	16
"	6	2,101	1,302	.....	4	1,306	1,307	1	.....
"	7	1,307	810	.....	1	811	817	6	.....
"	8	4,341	2,692	.....	6	2,698	2,684	.....	14
"	9	7,152 Est.	4,434	16,647	.....	−12,213	.....	12,213	.....
"	10	94 Old.	58	.....	105	163	.....	.....	163
"	11	2,861	1,774	.....	3	1,777	1,761	.....	16
E. Farley	1	4,481	2,778	2	.....	2,776	2,769	.....	7
L. Farley	1	1,918	1,189	.....	909	2,098	861	.....	1,237
"	2	503	312	.....	2,943	3,255	84	.....	3,171
"	3	4,653	2,885	.....	21	2,906	2,908	2	.....

L. Farley	4	15,201	9,425	.....	46	9,471	9,473	2	.....	
Farley-Fuzzell	1	1,289	799	1,972	.....	−1,173	215	1,388	.....	
"	2	11,413	7,076	61	.....	7,015	7,021	6	.....	
R. Ferguson	1	3,648 Est.	1,320	1,320	.....	.....	.....	.....	.....	
"	..	4,842	1,237	.....	.....	1,237	1,232	.....	5	
Ferndale Comm	1	19,178	11,891	.....	19	11,910	11,864	.....	46	
"	2	2,767	1,715	530	.....	1,185	−15	.....	1,200	
"	3	6,131	3,801	18	.....	3,783	3,621	.....	162	
"	4	13,933 Old	8,638	.....	8,054	16,692	965	.....	15,727	
"	5	1,914	1,187	.....	109	1,296	987	.....	309	
E. Fortson	6	1,204 Est.	482	602	.....	−120	.....	120	.....	
"	1	247 Est.	153	573	.....	−420	−5	415	.....	
Fortson-Farley	2	262 Est.	162	.....	2,727	2,889	.....	.....	2,889	
"	1	10 Est.	6	326	.....	−320	.....	320	.....	
Foster	3	60 Est.	37	.....	516	553	.....	.....	553	
A. B. Fox	1	38	23	.....	133	156	50	.....	106	
Chas. Funk	1	5,140	3,187	.....	22	3,209	3,156	.....	53	
M. Fuzzell	1	8,426	5,224	14	.....	5,210	5,213	3	.....	
"	1	739 Old	458	.....	3,004	3,462	.....	.....	3,462	
"	2	387 Est.	240	.....	1,295	1,535	.....	.....	1,535	
"	3	1,446	897	.....	1,422	2,319	2,321	2	.....	
J. H. George	1	569	353	2	.....	351	314	.....	37	
Hab-Precure	1	5,041	3,126	1	.....	3,125	3,136	11	.....	
"	2	4,575	2,836	.....	35	2,871	2,871	.....	.....	
R. Hammer	1	1,195	741	.....	33	774	744	.....	30	
"	2	6,917	4,288	2	.....	4,286	4,285	.....	1	
M. Haindl	1	3,050	1,891	27	.....	1,864	1,850	16	.....	
S. Hiddleston	1	7,027	4,357	.....	112	4,469	5,712	1,243	.....	
Holmes-Gray	1	1,914	1,187	36	.....	1,151	1,151	.....	.....	
A. Huffman	1	3,058	1,896	.....	83	1,979	1,967	.....	12	
"	2	3,151	1,954	3	.....	1,951	1,937	.....	14	
Ivanhoe Add	1	5,835	3,618	18	.....	3,600	3,562	.....	38	
"	2	10,416 Est.	6,458	.....	17,822	24,280	195	.....	24,085	
Jennings	1	3,213 Est.	1,992	.....	9,886	11,878	.....	.....	11,878	
"	2	178 Est.	110	.....	87	197	.....	.....	197	

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Well	No.	Potent.	Ten. All. for May	May, 1931 Over	May, 1931 Under	Net. Ten. Allow.	Actual May Prod.	May 1, 1931 Over	May 1, 1931 Under
Jennings	3	313 Est.	196	196					
		4,087	1,216	419		797	372		425
B. Johnson	1	1,069	663		11	674	686	12	
"	2	1,936 Est.	1,200	20,068		−18,868		18,868	
"	3	2,012	1,248		56	1,304	1,254		50
"	4	4,779	2,963	2		2,961	2,935		26
"	5	3,789	2,349		2	2,351	2,343		8
"	6	7,137	4,425		5,357	9,782	9,746		36
"	7	817	507		131	638	1,263	625	
"	8	534	331		4	335	280		55
"	9	2,421	1,501		3	1,504	1,504		
Jones Comm	1	19,792	12,271	36		12,235	12,244	9	
"	2	13,117	8,133	38		8,095	3,859		4,236
"	3	9,709	6,020		4	6,024	6,037	13	
"	4	4,855	3,010	1,089		1,921	−490		2,411
H. W. Jones	1	19,792 Old	12,271		27,969	40,240	102		40,138
"	2	11,670	7,235		30	7,265	7,258		7

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H. W. Jones	3	19,139	11,866		2	11,868	11,809		59
"	4	2,901	1,736	15		1,721	4,622	2,901	
L. Jones	1	2[illegible]04	1,676		1	1,677	1,677		
"	2	[illegible]754	1,708		20	1,728	1,695		33
"	3	3,571	2,214	2		2,212	2,168		44
"	4	1,517	941		1	942	940		2
"	5	8,402	5,209		1	5,210	5,213	3	
"	6	7,168	4,444		4	4,448	4,448		
"	7	1,195	741		1	742	738		4
"	8	420	260		11	271	231		40
"	9	1,400	868		2	870	822		48
"	10	44,341	2,692		1	2,693	2,692		1
"	11	1,120	695	1		694	693		1

L. Jones	12	7,095	4,399	.....	252	4,651	4,652	1	.....
"	13	28,381	17,596	15	.....	17,581	17,452	.....	129
Mae Knox	14	16,618	10,303	.....	479	10,782	10,783	1	.....
"	1	15,358	9,522	.....	13,681	23,203	10,169	.....	13,034
"	2	6,629	4,110	23	.....	4,087	4,085	.....	2
"	3	7,375	4,573	2,331	.....	2,242	2,225	.....	17
Lawrence Place	4	9,196	5,701	.....	697	6,398	6,247	.....	151
"	1	43,459	26,945	5	.....	26,940	27,065	125	.....
"	2	23,013	14,268	.....	11	14,279	14,432	153	.....
M. Lawton	3	42,525	26,366	.....	24	26,390	26,343	.....	47
"	1	2,798	1,735	.....	67	1,802	1,808	6	.....
"	2	1,855	1,150	.....	43	1,193	1,195	2	.....
Lemmon	1	1,330	825	1	.....	824	662	.....	162
"	2	4,271	2,648	.....	6	2,654	2,653	.....	1
"	3	1,284	796	.....	670	1,466	1,469	3	.....
"	4	957	593	17	.....	576	577	1	.....
"	5	1,752 Est.	1,086	6,588	.....	−5,502	.....	5,502	.....
Lindsey	2	4,936	3,060	.....	2	3,062	3,049	.....	13
Mackey	1	794 Est.	492	140	.....	352	.....	.....	352
Magnolia H	1	3,244	2,011	.....	90	2,101	2,125	24	.....
Mid-Texas	1	5,392	3,343	.....	3	3,346	3,347	1	.....
M. K. T	1	5,415	3,357	3	.....	3,354	3,306	.....	48
"	2	10,550	6,541	.....	4,404	10,945	10,940	.....	5
"	3	13,350	8,277	.....	126	8,403	8,340	.....	63
"	5	26,047	16,149	.....	174	16,323	16,237	.....	86
"	6	47,272	.....	.....	.....	9,894	9,894	.....	.....
Mt. Vernon	1	2,101 Est.	1,303	.....	2,501	3,804	4,054	250	.....
Okla. City	1	229 Est.	56	56	.....	.....	.....	.....	.....
		503	150	.....	.....	150	134	.....	16
Okla. State	1	4,952	3,070	.....	.....	3,070	3,073	3	.....
"	2	10,281	6,374	.....	7	6,381	6,382	1	.....
"	3	20,515	12,719	.....	.....	12,719	12,723	4	.....
"	4	18,848	11,686	.....	1	11,687	11,674	.....	13
"	5	14,965	9,279	.....	13,218	22,497	22,487	.....	10
"	6	2,641	1,637	2	.....	1,635	1,630	.....	5
"	7	7,137	4,425	.....	2	4,427	4,428	1	.....

Well	No.	Potent.	Ten. All. for May	May, 1931 Over	May, 1931 Under	Net. Ten. Allow.	Actual May Prod.	May 1, 1931 Over	May 1, 1931 Under
Okla. State	8	17,748	11,004	.....	7	11,011	11,009	.....	2
Pasadena Hts	1	8,216	5,094	.....	6	5,100	5,095	.....	5
"	2	3,734	2,315	.....	.....	2,315	2,302	.....	13
"	3	1,774	1,100	.....	227	1,327	1,331	4	.....
"	4	14,844	9,203	21	.....	9,182	9,172	.....	10
"	5	840	521	7,517	.....	−6,996	.....	6,996	.....
"	6	2,721 Est.	.....	.....	.....	.....	94	94	.....
S. Peterson	1	3,301	2,047	.....	3	2,050	2,008	.....	42
"	2	11,067	6,861	.....	4	6,865	6,791	.....	74
"	3	20,593	12,768	.....	600	13,368	13,363	.....	5
"	4	3,741	2,320	.....	12	2,332	2,271	.....	61
"	5	2,672	1,657	.....	6	1,663	1,544	.....	119
"	6	20,342	12,612	.....	3	12,615	12,556	.....	59
"	7	7,483	4,639	.....	2	4,641	4,641	.....	.....
"	8	3,160	1,959	.....	4	1,963	1,920	.....	43
Phelans Add	1	840	521	.....	.....	521	522	1	.....
"	2	1,610	998	.....	6	1,004	1,003	.....	1
Phillips	1	18,204	11,286	.....	17	11,303	11,313	10	.....

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A. Precure	1	6,675	4,139	2,082	.....	2,057	1,992	.....	65
E. Precure	1	5,313	3,294	.....	.....	3,294	3,233	.....	61
"	2	7,671	4,756	.....	4	4,760	4,716	.....	44
Rensimer	1	2,521	1,563	.....	70	1,633	1,579	.....	54
M. Reynolds	1	630	391	.....	135	526	592	66	.....
Salsman	1	1,120	695	.....	2	697	708	11	.....
"	2	856 Est.	531	1,198	.....	−667	.....	667	.....
"	3	163	101	188	.....	−87	.....	87	.....
"	4	2,054	1,273	.....	.....	1,273	1,284	11	.....
"	5	187 Old	116	3,039	.....	−2,923	.....	2,923	.....
Spannagel	1	20,142	12,488	.....	17	12,505	12,471	.....	34
Spillman	1	5,695	3,531	.....	5	3,536	3,532	.....	4

Spillman	2	6,722	4,168	.....	9	4,177	4,178	1	.....
"	4	5,788	3,589	498	.....	3,091	3,493	402	.....
Starkey	1	7,773	4,819	109	.....	4,710	4,722	12	.....
"	2	5,376	3,333	27	.....	3,306	3,327	21	.....
M. Sudik	1	13,210	8,190	.....	1,718	9,908	9,787	.....	121
"	2	16,863	10,455	3	.....	10,452	10,424	.....	28
"	3	10,853	6,729	.....	3	6,732	6,722	.....	10
"	4	14,564	9,030	.....	8	9,038	9,002	.....	36
"	5	163	101	.....	65	166	.....	.....	166
"	6	17,085	10,593	.....	29	10,622	10,602	.....	20
"	7	6,068	3,762	.....	.....	3,762	3,742	.....	20
"	8	14,214	8,813	.....	1	8,814	8,757	.....	57
"	9	20,259	12,561	.....	36	12,597	12,483	.....	114
"	10	14,074	8,726	.....	403	9,129	9,103	.....	26
E. Theimer	1	13,817	8,567	1	.....	8,566	8,510	.....	56
"	2	373	232	.....	3	235	203	.....	32
"	3	12,043	7,467	2	.....	7,465	7,461	.....	4
"	4	24 Est.	15	.....	165	180	.....	.....	180
"	5	2,101	1,302	.....	25	1,327	1,322	.....	5
"	6	1,260	781	.....	21	802	778	.....	24
"	7	5,648	3,502	.....	5	3,507	3,493	.....	14
"	8	1,447	897	.....	84	981	973	.....	8
Terrace Lawn	1	41,452	25,700	.....	6,035	31,735	31,728	.....	7
"	2	46,944	.....	.....	.....	.....	17,607	17,607	.....
Thos. Fuzzell	1	495 Est.	307	1,149	.....	−842	.....	842	.....
"	3	177 Est.	110	445	.....	−335	.....	335	.....
C. Trosper	1	10,376	6,433	.....	12,446	18,879	8,300	.....	10,579
"	2	11,203	6,946	.....	307	7,253	7,251	.....	2
"	3	14,984	9,290	.....	12,001	21,291	19,731	.....	1,560
"	4	5,928	3,676	.....	276	3,952	3,563	.....	389
C. E. Trosper	1	8,496	5,267	3	.....	5,264	5,206	.....	58
E. Trosper	1	9,196	5,701	.....	11	5,712	5,827	115	.....
"	2	9,593	5,947	.....	72	6,019	9,897	3,878	.....
H. Trosper	1	8,309	5,152	.....	114	5,266	5,368	102	.....
"	2	10,564	6,550	.....	9,339	15,889	15,802	.....	87
"	3	5,742	3,560	.....	.....	3,560	3,563	3	.....

Well	No.	Potent.	Ten. All. for May	May, 1931 Over	May, 1931 Under	Net. Ten. Allow.	Actual May Prod.	May 1, 1931 Over	May 1, 1931 Under
H. Trosper	4	9,593	5,947	.....	12	5,859	5,990	31	.....
"	5	4,341	2,692	32	.....	2,660	2,693	33	.....
"	6	2,987	1,852	.....	3,226	5,078	−5	.....	5,085
"	7	1,415	877	.....	1,626	2,503	1,410	.....	1,093
L. Trosper	1	4,370	2,709	80	.....	2,629	2,756	127	.....
"	2	786 Old	487	.....	843	1,330	.....	.....	1,330
P. Trosper	1	566	351	.....	19,925	20,276	398	.....	19,878
Tros. Hughes	1	7,235	4,486	156	.....	4,330	4,310	.....	20
Trosper	1	27 Est.	17	237	.....	−220	.....	220	.....
"	2	12,230	7,583	.....	94	7,677	7,664	.....	13
"	3	1,163	721	.....	1,419	2,140	545	.....	1,595
"	4	9,463	5,867	11	.....	5,856	5,836	.....	20
"	6	943	585	.....	2,739	3,324	436	.....	2,888
"	7	1,226	760	.....	3,128	3,888	520	.....	3,368
"	8	5,333	3,307	141	.....	3,166	3,152	.....	14
"	9	3,268	2,026	.....	90	2,116	2,101	.....	15
"	10	7,632	4,732	3	.....	4,729	4,731	2	.....
"	11	4,653	2,885	9	.....	2,876	2,863	.....	13
Unsel-Krager	1	9,243	5,730	.....	1	5,731	5,730	.....	1
"	2	8,052	4,992	318	.....	4,674	4,681	7	.....

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Unsel-Krager	3	6,185	3,835	1	.....	3,834	3,827	.....	7
M. Unsell	1	5,742	3,560	.....	4	3,564	3,564	.....	.....
"	2	3,594	2,229	.....	28	2,257	2,271	14	.....
"	3	1,307	810	104	.....	706	691	.....	15
"	4	3,968	2,460	3,441	.....	−981	630	1,611	.....
"	5	1,284	796	1	.....	795	793	.....	2
"	6	2,918	1,809	.....	8	1,817	1,813	.....	4
View Point	1	25,814	16,005	.....	5	16,010	15,889	.....	121
"	2	39,865	24,716	1,838	.....	22,878	22,539	.....	339

"	3	68,386	42,399	.....	67	42,466	43,344	878	.....
"	4	50,321	31,199	.....	143	31,342	31,284	.....	58
Weber-Wall	1	3,333	2,066	816	.....	1,250	1,169	.....	81
Werner-Farley	1	4,831	2,995	.....	3	2,998	3,000	2	.....
"	2	2,451	1,519	1	.....	1,518	1,408	.....	110
"	3	3,314	2,055	.....	4	2,059	2,057	.....	2
M. Warden	1	6,419	3,979	.....	.....	3,979	3,967	.....	12
Watters	2	2,122	1,316	.....	16	1,332	1,336	4	.....
"	3	822 Est.	510	3,034	.....	−2,524	.....	2,524	.....
"	4	5,628	3,489	1	.....	3,488	3,474	.....	14
"	5	2,389	1,481	.....	64	1,545	1,482	.....	63
"	6	5,156	3,197	1	.....	3,196	3,196	.....	.....
Wheeland	1	16,569	10,273	.....	173	10,446	10,405	.....	41
Wheeler	1	16 Est.	10	.....	19	29	.....	.....	29
"	2	3,018	1,871	.....	978	2,849	2,752	.....	97
"	3	3,018	1,871	.....	2	1,873	1,607	.....	266
W. Anderson	1	252	156	.....	4	160	163	3	.....
"	3	1,855	1,150	58	.....	1,092	1,085	.....	7
E. Williams	1	5,408	3,353	.....	1	3,354	3,332	.....	22
W. Canfield	1	3,333	2,066	.....	50,166	52,232	30,490	.....	21,742
"	2	4,386	2,719	.....	.....	2,719	2,720	1	.....
Worley Hts.	1	2,592 Est.	1,607	8,409	.....	−6,802	.....	6,802	.....
Werner-Speegle	1	2,067	1,282	.....	53	1,335	1,331	.....	4
"	2	1,179	731	.....	2	733	744	11	.....
"	3	2,342	1,452	.....	2	1,454	1,457	3	.....
Totals		1,858,837	1,095,936	121,750	311,578	1,285,764	1,145,549	131,976	272,191

Johnson-Dabney et al.

Foote	1	18,770	11,637	.....	280	11,917	7,402	.....	4,515
		18,770	11,637	.....	280	11,917	7,402	.....	4,515

Well	No.	Potent.	Ten. All. for May	May, 1931 Over	May, 1931 Under	Net Ten. Allow.	Actual May Prod.	May 1, 1931 Over	May 1, 1931 Under
Jones Brothers									
Patterson	1	31,086	19,273	2,332	.....	16,941	19,522	2,581	.....
Sullivan	1	18,144	11,249	.....	1,398	12,647	13,646	999	.....
Totals		49,230	30,522	2,332	1,398	29,588	33,168	3,580	.....
C. C. Julian Oil & Royalty Corp.									
Houser	1	2,964 Est.	1,838	5,534	.....	−3,696	.....	3,696	.....
Shepherd	2	2,988 Est.	1,853	2,211	.....	−358	.....	358	.....
Walker	3	4,128 Est.	2,559	.....	1,043	3,602	.....	.....	3,602
Totals		10,080	6,250	7,745	1,043	−452	.....	4,054	3,602
Kedberg Oil Company									
Burris	1	3,672 Old	2,277	17,355	.....	−15,078	4,999	20,077	.....
Totals		3,672	2,277	17,355	.....	−15,078	4,999	20,077	.....
Mabee et al.									
Ben Mills	1	51,048 Est.	31,650	.....	17,711	49,361	−319	.....	49,680
Reynolds	1	43,149	26,752	2,684	.....	24,068	25,162	1,094	.....
Rusty Smith	1	60,468	37,490	.....	2,542	40,032	36,912	.....	3,120
Schillings	1	13,370	8,290	.....	2,388	10,678	11,488	790	.....
Totals		168,035	104,182	2,684	22,641	124,139	73,223	1,884	52,800
Marco Oil & Refining Co.									
Holder	1	1,248 Est.	774	29,027	.....	−28,253	.....	28,253	.....
Totals		1,248	774	29,027	.....	−28,253	.....	28,253	.....

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Mid-Kansas Oil & Gas Co.									
Browning	2	550	341	.....	554	895	895	.....	.....
Fortson	1	2,035	1,261	.....	180	1,441	1,441	.....	.....
"	5	302 Old	187	.....	535	722	.....	.....	722
Mollman	1	2,173	1,347	.....	.....	1,347	1,347	.....	.....
"	2	9,226	5,720	.....	.....	5,720	5,720	.....	.....
"	3	4,875	3,022	.....	.....	3,022	3,022	.....	.....
"	4	5,072	3,145	.....	.....	3,145	3,145	.....	.....
Troop-Brown	1	630	391	17	.....	374	374	.....	.....
Totals		24,863	15,414	17	1,269	16,666	15,944	.....	722
Mid Texas-Petroleum Corp.									
Floral Hills	1	7,288 Est.	4,519	8,329	.....	−3,810	.....	3,810	.....
Totals		7,288	4,519	8,329	.....	−3,810	.....	3,810	.....
Minnehoma Oil Co.									
Pugh	1	61,475	38,114	.....	85	38,199	38,191	.....	8
Totals		61,475	38,114	.....	85	38,199	38,191	.....	8
R. A. McArthur									
Armour	1	55,250	34,255	.....	1,583	35,838	38,713	2,875	.....
Totals		55,250	34,255	.....	1,583	35,838	38,713	2,875	.....
Morgan Petroleum Corp.									
Stout	1	24,216 Est.	15,014	69,593	.....	−54,579	.....	54,579	.....
Totals		24,216	15,014	69,593	.....	−54,579	.....	54,579	.....

Oils Incorporated

Well	No.	Potent.	Ten. All. for May	May, 1931 Over	May, 1931 Under	Net. Ten. Allow.	Actual May Prod.	May 1, 1931 Over	May 1, 1931 Under
Hathaway	1	50,188	31,116	.....	16,711	47,827	18,782	.....	29,045
Mooreland	1	5,985 Est.	3,711	.....	9,499	13,210	−139	.....	13,349
Ross	1	55,329	34,304	.....	1,533	35,837	35,159	.....	678
Thompson	1	56,602	35,903	.....	33,519	69,422	12,722	.....	20,700
Totals		168,104	105,034	.....	61,262	166,296	66,524	.....	99,772

Phillips Petroleum Co.

Ashcan	1	63,782	39,545	.....	563	40,108	39,844	.....	264
Ball	1	12,989	8,053	.....	4,876	12,929	9,681	.....	3,248
Black	1	53,075	32,906	.....	415	33,321	33,206	.....	115
Blazier	1	49,602	30,753	.....	539	31,292	31,194	.....	98
Boultinghouse	1	49,887	30,930	.....	6,394	37,324	37,086	.....	238
Burt	1	20,856	12,931	.....	252	13,183	13,100	.....	84
Carey	1	1,947	1,207	.....	238	1,445	794	.....	65=
Ciger	1	60,611	37,579	.....	8,000	45,579	45,561	.....	18
Clayton	1	30,901	19,158	.....	5,728	24,886	24,517	.....	369
Crean	1	31,230 Est.	15,113	10,113	.....	.....	.....	.....	.....
		25,475	7,218	.....	.....	7,218	7,027	.....	191
Damewood	1	53,910 Est.	18,098	18,098	.....	.....	.....	.....	.....
		58,571	17,815	.....	.....	17,815	17,639	.....	176
Davis	1	58,461	36,246	.....	4,322	40,568	40,365	.....	203
Day	1	59,949	37,169	.....	276	37,445	37,207	.....	236
Forrester	1	43,143 Est.	.....	14,381	.....	−14,381	.....	14,381	.....
Hankins	1	4,616	2,862	.....	417	3,279	3,251	.....	28
Harrell	1	1,946	1,207	.....	274	1,481	1,067	.....	414
Hatcher	1	3,745	2,322	.....	8,999	11,321	11,274	.....	47
Henderson	1	39,024 Est.	.....	.....	.....	.....	6,504	6,504	.....
Hercheck	1	48,989	30,373	.....	1,006	31,379	31,192	.....	187
Higgins	1	46,424	28,783	.....	1,120	29,903	29,849	.....	54

Highland	1	33,031	20,479	.....	2,550	23,029	22,981	.....	.....	48
Johnson	1	29,538 Est.	3,981	4,923	.....	−942	3,981	4,923	.....	
W. B. Jones	1	3,078	1,908	.....	815	2,723	2,716	.....		7
King	1	46,801	29,017	.....	2,481	31,498	31,077	.....		421
Kleinneger	1	43,583	27,021	.....	381	27,402	27,272	.....		130

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Laybrand	1	52,393	32,484	.....	1,872	34,356	34,306	.....	.....	50
McAusland	1	52,424	32,503	.....	895	33,398	33,163	.....		235
McBeth	1	67,200 Est.	20,555	8,647	.....	11,908	16,232	4,324	.....	
Mosey	1	31,410	19,474	.....	171	19,645	19,532	.....		113
Nunn	1	70,234	43,545	334	.....	43,211	42,997	.....		214
Othenin	1	52,320 Est.	4,088	16,351	.....	−12,263	.....	12,263	.....	
Perry	1	36,752 Est.	.....	.....	.....	.....	5,292	5,292	.....	
Rallen	1	23,906	14,822	.....	160	14,982	13,831	.....		1,151
Robb	1	14,955 Est.	4,849	4,849	.....	.....	.....	.....	.....	
		11,372	2,040	.....	.....	2,040	1,836	.....		204
Roden	1	58,152	36,054	.....	1,348	37,402	37,305	.....		97
Roose	1	8,653	5,365	.....	28	5,393	5,369	.....		24
Sam	1	45,199 Est.	.....	.....	.....	.....	8,218	8,218	.....	
Schilling	1	42,264 Est.	12,502	13,517	.....	−1,015	.....	1,015	.....	
Temple	1	50,430 Est.	15,369	16,479	.....	−1,110	.....	1,110	.....	
Unruh	1	57,558	35,686	.....	1,979	37,665	37,581	.....		84
Velt	1	11,273	6,989	.....	26	7,015	7,011	.....		4
Walnut Grove	1	63,813	39,564	.....	619	40,183	39,893	.....		290
Winstead	1	21,696 Est.	7,331	7,331	.....	.....	.....	.....	.....	
		19,015	9,624	.....	.....	9,624	9,617	.....		7
Totals		1,644,392	830,518	115,023	56,744	772,239	820,570	58,030		9,699

Plains Petroleum Corp.

Sadler	1	5,292	3,281	23,945	.....	−20,664	1,791	22,455	.....	
Totals		5,292	3,281	23,945	.....	−20,664	1,791	22,455	.....	

Prairie Oil & Gas Co.

Well	No.	Potent.	Ten. All. for May	May, 1931 Over	May, 1931 Under	Net Ten. Allow.	Actual May Prod.	May 1, 1931 Over	May 1, 1931 Under
Hiddleston	1	972	603	1,843	.....	−1,240	1,356	2,596	.....
"	3	6,510	4,036	.....	895	4,931	4,930	.....	1
"	4	596	369	.....	22	391	62	.....	329
"	5	1,751	1,086	.....	239	1,325	1,325	.....	.....
"	6	5,164	3,202	.....	143	3,345	3,341	.....	4
"	7	3,127	1,939	.....	90	2,029	2,028	.....	1
"	9	1,375	853	.....	187	1,040	1,040	.....	.....
Sigmon	1	3,824	2,371	.....	117	2,488	2,466	.....	22
"	2	4,293	2,662	.....	140	2,802	2,799	.....	3
"	3	3,262	2,023	.....	34	2,057	1,995	.....	62
"	4	6,231	3,863	.....	110	3,973	3,973	.....	.....
"	5	2,442	1,514	.....	296	1,810	1,789	.....	21
"	6	9,715	6,023	.....	189	6,212	6,212	.....	.....
"	7	2,319	1,438	.....	62	1,500	1,493	.....	7
Totals		51,581	31,982	1,843	2,524	32,663	34,809	2,596	450

Reynolds & Unruh

Evans	1	24,831	15,395	.....	483	15,878	15,508	.....	370
Totals		24,831	15,395	.....	483	15,878	15,508	.....	370

Russell Petroleum Corp.

Roosevelt	1	14,663	9,091	.....	472	9,563	11,291	1,728	.....
Reno	1	50,267 Est.	25,132	47,202	.....	−22,070	.....	22,070	.....
Totals		64,930	34,223	47,202	472	−12,507	11,291	23,798	.....

Scott & Company										
Ashby	1	.....	.....	17,940	.....	−17,940	116	18,056	.....	
Totals		.....	.....	17,940	.....	−17,940	116	18,056	.....	
J. C. Shaffer										
Arnold Baker	1	12,614	7,821	.....	219	8,040	8,215	175	.....	
Childs	1	4,448	2,758	.....	17	2,775	2,832	57	.....	
Cunningham-Cook	1	13,164	8,162	.....	452	8,614	8,521	.....	93	
"	2	11,437	7,091	.....	322	7,413	7,558	145	.....	
Giles	1	42,104 Est.	.....	7,184	.....	−7,184	6,288	13,472	.....	
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Totals		83,767	25,832	7,184	1,010	19,658	33,414	13,849	93	
Shell Petroleum Co.										
Egermeier	1	3,946	2,446	.....	109	2,555	2,535	.....	20	
Petty	1	1,383	858	.....	39	897	889	.....	8	
"	2	102	63	.....	414	477	480	3	.....	
"	3	2,327	1,442	.....	43	1,485	1,482	.....	3	
"	4	1,289 Old.	799	.....	2,292	3,091	.....	.....	3,091	
"	5	110	68	.....	615	683	.....	.....	683	
"	6	1,352	838	.....	403	1,241	1,240	.....	1	
"	7	943	585	.....	761	1,346	96	.....	1,250	
Totals		11,452	7,099	.....	4,676	11,775	6,722	3	5,056	
Sinclair Oil & Gas Co.										
Donnell	1	5,986	3,711	1	.....	3,710	3,710	.....	.....	
Kinter	2	54 Est.	33	454	.....	−421	.....	421	.....	

Well	No.	Potent.	Ten. All. for May	May, 1931 Over	May, 1931 Under	Net. Ten. Allow.	Actual May Prod.	May 1, 1931 Over	May 1, 1931 Under
Kinter	3	216 Est.	134	.....	308	442	.....	.....	442
"	4	56 Est.	35	.....	145	180	.....	.....	180
"	5	51 Est.	22	.....	118	140	.....	.....	140
"	6	18 Est.	11	38	.....	−27	.....	27	.....
"	7	79	49	.....	83	132	.....	.....	132
"	8	15 Est.	9	.....	19	28	.....	.....	28
"	9	31 Est.	19	3,754	.....	−3,735	.....	3,735	.....
"	10	89 Est.	55	.....	351	406	.....	.....	406
Schoolland 54	1	3,018 Est.	1,871	20,196	.....	−18,325	.....	18,325	.....
"	2	3,254	2,018	.....	.....	2,018	2,018	.....	.....
"	3	2,910	1,804	2	.....	1,802	1,804	2	.....
"	4	6,416	3,978	1	.....	3,977	3,977	.....	.....
"	5	790 Est.	490	9,866	.....	−9,376	.....	9,376	.....
"	6	7,080	4,390	.....	.....	4,390	4,389	.....	1
"	7	2,284	1,416	.....	51	1,467	1,467	.....	.....
"	8	1,408	873	.....	.....	873	873	.....	.....
"	9	4,836	2,998	.....	1	2,999	2,998	.....	1
"	10	16,656	10,327	.....	42	10,369	10,369	.....	.....
"	11	5,133	3,182	575	.....	2,607	2,369	.....	238
"	12	17,064	10,579	1	.....	10,578	52,816	42,238	.....
"	13	8,058	4,996	8	.....	4,988	4,995	7	.....
"	14	11,549	7,160	.....	20	7,180	7,181	1	.....
"	15	9,295	5,763	1	.....	5,762	5,763	1	.....
"	16	9,548	5,920	.....	324	6,244	6,243	.....	1
Schoolland 67	1	12,536	7,773	101,754	.....	−93,981	.....	93,981	.....
"	2	1,970	1,221	.....	237	1,458	1,458	.....	.....
"	3	8,396	5,206	.....	6	5,212	5,213	1	.....
"	5	20,690	12,828	2	.....	12,826	12,826	.....	.....
"	7	609 Est.	378	3,012	.....	−2,634	1,165	3,799	.....
Schoolland 89	1	71,164	10,642	.....	116	10,758	10,758	.....	.....
"	2	19,731	12,233	.....	16	12,249	12,249	.....	.....
"	3	13,943	8,644	.....	24	8,668	8,670	2	.....
Stamper	2	79	49	.....	114	163	128	.....	35

"	3	250 Est.	155	.....	321	476	.....	.....	475
"	4	21 Est.	13	.....	193	206	.....	.....	206
Vencl	1	7,042	4,366	.....	2,828	2,924	.....	.....	2,924
"	2	1,158	718	9	2	4,368	4,366	.....	4
"	3	1,954	1,212	177	.....	709	718	9	.....
"	4	356 Est.	221	8,482	.....	1,035	1,035	.....	.....
"	5	7,438	4,612	.....	1	−8,261	.....	8,261	.....
"	6	9,004	5,582	10,341	.....	4,613	4,612	.....	1
"	7	1,224 Est.	759	.....	2,744	−4,759	.....	4,759	.....
"	8	5,092	3,157	1	.....	3,503	683	.....	2,820
"	9	24,508	15,195	.....	2	3,156	3,131	.....	25
"	10	1,424 Old.	883	3,438	.....	15,197	15,196	.....	1
"	11	13,830	8,575	.....	.....	−2,555	.....	2,555	.....
"	12	15,868	9,838	.....	3,307	8,575	8,575	.....	.....
						13,145	13,145	.....	.....

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Vencl	13	28,991	17,974	.....	208	18,182	18,185	3	.....
"	14	9,956	6,173	.....	.....	6,173	6,173	.....	.....
"	15	28,240	17,509	.....	1,435	18,944	18,944	.....	.....
"	16	31,025	19,235	.....	538	19,773	19,773	.....	.....
Totals		398,548	247,090	162,113	13,554	98,531	277,975	187,503	8,059

Skelly Oil Co.

Ainsworth	1	4,236	2,626	.....	142	2,768	2,767	.....	1
"	2	2,823	1,750	.....	86	1,836	1,831	.....	5
"	3	3,678 Est.	2,280	15,687	.....	−13,407	.....	13,407	.....
"	4	4,807	2,980	.....	157	3,137	3,122	.....	15
Dillon	1	3,356	2,081	.....	26	2,107	2,103	.....	4
"	2	5,946	3,686	.....	57	3,743	3,710	.....	33
Dunn	1	16,951	10,510	.....	122	10,632	10,627	.....	5

Well	No.	Potent.	Ten. All. for May.	May, 1931 Over	May, 1931 Under	Net. Ten. Allow.	Actual May Prod.	May 1, 1931 Over	May 1, 1931 Under
Fields	1	26,296	16,303	.....	752	17,055	17,031	.....	24
Harper-Turner	1	64,804	40,179	.....	15,550	55,729	35,510	.....	219
Hoops	1	6,836 Est.	4,238	21,961	.....	−17,723	.....	17,723	.....
"	2	2,770 Est.	1,717	6,908	.....	−5,191	.....	5,191	.....
"	3	5,910	3,174	.....	17	3,191	4,130	939	.....
"	4	4,788	2,969	813	.....	2,156	2,124	.....	32
"	5	444	275	.....	17	292	272	.....	20
"	6	1,134 Est.	703	1,364	.....	−661	.....	661	.....
"	7	3,972	2,463	.....	136	2,599	2,491	.....	108
"	8	5,732	3,554	.....	184	3,738	3,718	.....	20
Hurt	1	68,818	42,667	.....	23	42,690	42,665	.....	25
Tanner	1	3,538	2,194	.....	163	2,357	2,306	.....	51
"	2	37,417	23,199	.....	7,943	31,142	38,879	7,737	.....
Totals		274,256	169,548	46,733	25,375	148,190	193,286	45,658	562
				Slick Urschel Inc.					
Alexander	1	9,576	5,937	.....	13,925	19,862	23,343	3,481	.....
"	2	1,260	781	615	.....	166	194	28	.....
Atkinson	1	10,254	6,357	.....	245	6,602	6,702	100	.....
"	2	13,373	8,291	.....	208	8,499	8,433	.....	66
Bailey	1	9,912	6,145	.....	437	6,582	6,611	29	.....
Baker	1	1,657	1,028	4,705	.....	−3,677	.....	3,677	.....
"	2	6,203	3,846	2,267	.....	1,579	1,586	7	.....
"	3	2,641	1,637	.....	12	1,649	1,606	.....	43
"	4	12,025	7,455	54	.....	7,401	7,526	125	.....
"	5	8,503	5,272	.....	1,477	6,749	6,771	22	.....
Blevins	1	36,399 Est.	12,046	12,046	.....	.....	.....	.....	.....
		29,982	6,700	.....	.....	6,700	8,641	1,941	.....
Campbell	1	33,774	20,940	.....	46	20,986	20,966	.....	20
"	2	38,311	23,753	.....	8,220	31,973	31,885	.....	88

"	3	53,901	33,419	.....	1,465	34,884	35,891	1,009	.....
S. Carter	1	12,462	7,726	.....	2,434	10,160	−492	.....	10,652
Central	1	3,789 Est.	2,319	137	.....	2,212	1,345	.....	867
"	2	24,160 Est.	.....	.....	.....	.....	3,020	3,020	.....
Classen	1	4,415	2,737	.....	1,683	4,420	.....	.....	4,420
"	2	20,595	12,769	.....	642	13,411	34,306	20,895	.....
"	3	52,215	32,373	.....	1,428	33,801	33,789	.....	12
"	4	46,280	28,693	.....	1,556	30,249	30,065	.....	184
"	5	56,352 Est.	.....	.....	.....	.....	587	587	.....
Classen Edward	1	46,721	28,967	.....	20	28,987	29,003	16	.....
Clegg	1	8,810	5,462	.....	344	5,806	6,084	278	.....
"	2	4,874	3,022	1,314	.....	1,708	1,937	229	.....
Crawford	1	10,666	6,613	.....	299	6,912	6,923	11	.....
Dannreuther	1	1,513	933	.....	67	1,005	1,060	55	.....
"	2	12,986	8,051	.....	411	8,462	8,547	85	.....
"	3	3,938	2,442	275	.....	2,167	2,222	55	.....
Daugherty	1	32,376	20,073	.....	20,546	40,619	13,575	.....	27,044
Dean	1	40,292	24,981	1	.....	24,980	24,903	.....	77
Dennis	1	4,387	2,720	.....	5,390	8,110	4,602	.....	3,508
Dumivan	1	8,022	4,973	.....	76	5,049	5,040	.....	9
Egbert	1	47,466 Est.	.....	.....	.....	.....	7,911	7,911	.....
Foote	1	13,299	8,245	.....	4,277	12,522	12,442	.....	80

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Foote	2	1,603	994	.....	5	999	1,105	106	.....
"	3	3,772	2,339	.....	579	2,918	2,979	61	.....
Foote-Briscoe	1	410	254	.....	107	361	163	.....	198
Frisco	1	36,187	22,436	158	.....	22,278	23,460	1,182	.....
"	2	23,987	14,872	.....	527	15,399	−91	.....	15,490
C. G. Frost	1	3,530	2,188	.....	94	2,282	2,208	.....	74
Frost Heights	1	4,444	2,755	9	.....	2,746	3,291	545	.....
"	2	3,943	2,445	.....	2,835	5,280	5,283	3	.....
"	3	1,074	666	.....	3,276	3,942	2,805	.....	1,137
"	4	5,075	3,146	5	.....	3,141	3,140	.....	1
Gleason	1	6,582	4,081	35	.....	4,046	4,025	.....	21
Harrison	1	1,575	976	.....	3,140	4,116	5,480	1,364	.....

Well	No.	Potent.	Ten. All. for May	May, 1931 Over	May, 1931 Under	Net. Ten. Allow.	Actual May Prod.	May 1, 1931 Over	May 1, 1931 Under
Hoops	1	1,872 Est.	1,161	.....	10,546	11,707	.....	.....	11,707
"	2	1,146	711	.....	31	742	720	.....	22
"	3	2,990	1,854	.....	81	1,935	1,933	.....	2
"	4	2,515	1,559	2,564	.....	−1,005	.....	1,005	.....
"	5	6,429	3,986	.....	3,792	7,778	5	.....	7,773
"	6	1,696	1,052	.....	22	1,074	1,071	.....	3
"	7	3,258	2,020	1,144	.....	876	875	.....	1
"	8	576	357	.....	1,285	1,642	.....	.....	1,642
Houghton	1	10,572	6,555	.....	133	6,688	6,688	10	.....
Houston	1	1,333	827	65	.....	762	735	.....	27
Huddleston	1	3,673	2,277	.....	357	2,634	2,636	2	.....
Hussman	1	514 Est.	319	2,404	.....	−2,085	.....	2,085	.....
Key	1	1,355	840	1,132	.....	−292	.....	292	.....
"	2	2,079	1,289	.....	36	1,325	−199	.....	1,524
Lard	1	55,573	34,455	.....	1,600	36,055	34,157	.....	1,898
Martin	1	8,876	5,503	22	.....	5,481	5,512	31	.....
Miller	1	3,778	2,342	.....	92	2,434	1,671	.....	763
Milner	1	7,151	4,433	.....	166	4,599	4,625	26	.....
"	2	8,034	4,981	.....	209	5,190	5,037	.....	153
Moore	1	1,680 Old	1,042	545	.....	497	.....	.....	467
Owens	1	52,036	32,262	.....	288	32,550	26,976	.....	5,574
Page	1	2,610	1,618	.....	712	2,330	2,713	383	.....
"	2	2,647	1,641	.....	103	1,744	1,453	.....	291
Rodman	1	929	576	.....	281	857	1,500	643	.....
Storie	1	8,543	5,296	3	.....	5,293	5,316	23	.....
Terminal	1	36,024 Est.	.....	.....	.....	.....	1,501	1,501	.....
Thornton	1	11,762	7,293	.....	235	7,528	7,611	83	.....
Townsend	1	3,078	1,909	.....	68	1,977	2,071	94	.....
Trumbly	1	4,969	3,081	256	.....	2,285	2,809	.....	16
Wespaco	1	55,375	34,332	.....	1,481	35,813	35,335	.....	478
Whitfield	1	44,127	27,358	.....	703	28,061	27,864	.....	197
Wilson	1	52,164	32,342	.....	1,722	34,064	33,989	.....	75
Zercherle	1	814 Est.	505	3,559	.....	−3	−208	2,846	.....
Totals		1,122,998	617,623	21,269	99,714	696,068	655,280	55,846	96,634

Sunray Oil Co.

Mead	1	65,659	40,709	.....	106	40,815	40,693	.....		122
Olafson	1	3,318 Est.	2,057	16,210	.....	−14,153	.....	14,153	.....	
R. Donivan	1	68,703	42,596	.....	739	43,335	43,332	.....		3
Twyford-Smith	1	51,865 Est.	32,156	40,108	.....	−7,952	.....	7,952	.....	
Totals		189,545	117,518	56,318	845	62,045	84,025	22,105		125

Watchorn Pet. Co.

Traders Camp	1	46,950 Est.	.....	.....	.....	.....	7,825	7,825	.....	
Totals		46,950 Est.	.....	.....	.....	.....	7,825	7,825	.....	

Westgate Oil Company

Carey	1	50,988 Est.	.....	.....	.....	.....	2,103	2,103	.....	
	2	50,336 Est.	.....	.....	.....	.....	6,292	6,292	.....	
Kelsey	1	17,180	10,651	299	.....	10,352	10,751	399	.....	
Wilson	1	30,432 E	17,039	10,543	.....	−3,514	.....	3,514	.....	
Totals		148,936	17,680	10,842	.....	6,838	19,146	12,308	.....	

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H. F. Wilcox Oil & Gas Co.

Roach	1	30,610 Est.	.....	.....	.....	.....	5,922	5,922	.....	
Short	1	13,227 Est.	1,270	1,270	.....	.....	.....	.....	.....	
		12,106	5,982	.....	.....	5,982	6,405	423	.....	
McGinnis	1	49,880 Est.	.....	.....	.....	7,237	5,985	-5,985	.....	
Wright	1	12,330 Est.	3,275	7,237	.....	−3,962	1,017	4,979	.....	
Totals		104,926	10,527	8,507	.....	2,020	19,329	17,309	.....	

Wrightsmith Oil Co.

Well	No.	Potent.	May, 1931 Ten. All. for May	May, 1931 Over	May, 1931 Under	Net. Ten. Allow.	Actual May Prod.	May 1, 1931 Over	May 1, 1931 Under
Smith	1	6,221	3,857	102	.....	3,755	3,751	.....	4
"	2	6,017	3,730	891	.....	2,839	2,839	.....	.....
Totals		12,238	7,587	993	.....	6,594	6,590	.....	4
Grand Totals		8,963,977	4,968,504	1,148,378	940,416	4,760,542	4,920,702	1,076,339	916,179

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Summary

Lease	Stock 7 A. M. 5/1/31	Total May Production	May Pipeline Runs	Stock 7 A. M. 6/1/31
Acme Oil & Gas Co.				
Armourdale	7,949	41,835	49,266	390
Totals	7,949	.....	49,266	390
Addition Petroleum Co.				
Aungst	423	25,567	19,418	7,256
Totals	423	.....	19,418	.....
Anderson & Pritchard				
Brown	4,366	8,218	9,425	3,146
Clark	3,472	22,612	23,229	2,855
M. Gibbons	3,236	12,510	12,485	3,685
Graham	384	1,770	927	1,235
Habeggar	1,465	1,044	1,375	1,130
Hathaway	414	21,397	12,959	8,869
Keys	1,496	4,634	5,270	858
Moore	283	1,791	1,419	652
Orphanage	2,041	861	2,881	32
Payne	4,618	.....	4,221	79
Pest House	679	11,957	6,347	6,350
Rayhill	10,339	24,910	29,598	5,636
Roosevelt	2,469	26,383	23,290	5,527
Westfall	2,394	42,079	38,825	5,572
Wilson-Carpenter	179	.....	.....	179
Wright	930	21,526	18,712	3,750
Wilhoit	814	.....	335	473
Sandness	7,290	22,060	24,465	4,866
Totals	46,869	223,752	215,763	54,894
Black Stock et al				
Harvey	834	3,967	4,548	313
Totals	834	3,967	4,548	313
Blackwell Oil & Gas Co.				
Page	631	.....	.....	631
Clemer	1,269	.....	.....	1,269
Schillings	691	26,122	26,392	579
Totals	2,591	26,122	26,392	2,479
British American Oil Co.				
Eckroat	1,005	32,029	26,527	6,506
Holmes	12,165	147,312	155,823	3,653
Lindsay	486	4,481	4,464	502
Totals	13,656	183,822	186,814	10,661
California Operating Co.				
Stout	2,104	.....	.....	2,104
Totals	2,104	.....	.....	2,104

Capitol P. & R. Co.

Lease	Stock 7 A. M. 5/1/31	Total May production	May pipeline runs	Stock 7 A. M. 6/1/31
Jones	1,265	22,322	23,052	546
Totals	1,265	22,322	23,052	546

Century Petroleum Corp.

Barr	2,816	11,196	14,031	300
Jefferson	566	796	824	539
McConnell	945	34,029	34,674	510
Wheeler	295	31,777	32,207	269
Wyatt	6,719	30,296	36,740	483
Totals	11,341	108,094	118,476	2,101

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Champlin Refining Co.

McCalep	398	5,877	6,034	241
Naden	467	4,880	4,875	493
Seal	580	3,265	4,222	432
Central	.....	4,798	5,544	744
Totals	1,445	18,820	20,675	1,910

Chatham Oil Co.

Eckroat	930	31,888	28,283	4,435
Lindsay	648	30,869	30,876	638
Totals	1,578	62,757	59,159	5,073

Coline Oil Co.

Clauer	4,909	20,013	19,917	6,459
Olds	8,362	14,824	17,740	5,739
Warren	4,847	8,186	11,201	1,832
	18,118	43,023	48,858	14,030
Miller	16,355	.....	.....	1,757
Totals	34,473	43,023	48,858	15,787

Courter Oil Co.

White	.....	5,554	.....	5,554
Totals	.....	5,554	.....	5,554

Continental Oil Co.

V. Sudik	5,699	5,357	3,837	7,459
Vinita Park	14,715	16,598	19,680	9,654
Totals	20,414	21,955	23,517	17,113

Cromwell-Franklin

Trosper Park	123,987	169,697	175,477	120,008
Totals	123,987	169,697	175,477	120,008

Dengail Oil & Gas Co.

Lease	Stock 7 A. M. 5/1/31	Total May Production	May Pipeline Runs	Stock 7 A. M. 6/1/31
Hile	8,898	17,437	18,210	8,424
Schillings	825	3,553	.....	4,378
[illegible]som	2,887	11,004	10,852	3,041
Woodson	8,683	23,895	25,255	7,322
Totals	21,293	55,889	54,317	23,165

Denver P. & R. Co.

Alexander	1,896	27,955	29,457	492
Harvey	334	9,090	9,013	530
Hatfield	5,972	15,771	21,435	366
Whitten	428	5,972	5,883	531
Totals	8,630	58,788	65,788	1,859

Don Leon Oil Co.

Burt	.....	5,176	.....	5,176
Hunzicker	945	33,835	34,092	746
Totals	945	~~35,855~~ 39,011	.....	5,922

Eason Oil Company

Lively	381	19,572	17,250	2,706
Totals	381	19,572	17,250	2,706

Empire Oil & Ref. Co.

Gustin	3,228	5,295	5,356	3,142
Refinery Site	5,238	11,789	15,963	1,076
Totals	8,466	17,084	21,319	4,218

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Franco-Dominion Oil Co.

Eckroat	243	.....	.....	282
Totals	243	.....	.....	.....

Wirt Franklin Pet. Corp.

Burge	3,128	5,954	4,161	4,919
Eacock	1,347	3,143	.....	4,489
Holder	7,977	.....	.....	6,584
Lowery	17,729	58,477	55,341	21,706
Page	3,118	16,586	18,291	1,459
Shahan	4,156	1,658	.....	5,817
Schillings	8,605	11,812	11,684	8,733
Theimer	9,799	52,650	37,466	24,905
Theimer-Butt	461	.....	.....	461
Page-Tucker	333	3,049	3,043	345
Wright	14,360	1,078	13,192	1,835
Totals	71,962	154,407	143,178	81,253

Hall & Briscoe

Lease	Stock 7 A. M. 5/1/31	Total May production	May pipeline runs	Stock 7 A. M. 6/1/31
Grace	1,997	.....	.....	1,997
Mueller	806	7,274	7,419	730
Totals	2,803	7,274	7,419	2,727

I. T. I. O. Oil Co.

Banta	602	215	606	209
Barker-Drake	405	3,991	3,999	397
A. Billen	388	−16	.....	372
A. Bodine	314	2,039	2,883	440
Bodine-Anderson	414	320	.....	734
S. Bodine	335	−15	246	74
E. Border	272	1,386	1,222	436
Blvd. View	576	−23	273	281
A. Brokaw	404	942	.....	1,346
C. Brokaw	374	15,426	13,733	1,976
Butterfield	793	966	1,523	226
Button	797	697	1,201	278
Canf-Button	666	3,736	3,407	996
L. Canfield	189	.....	.....	189
Capshaw	459	497	781	178
Carrico	1,525	14,269	15,177	600
Coppinger	2,596	20,284	19,174	3,634
Corff S. D.	4,567	13,085	16,940	739
Drake	381	3,866	3,781	466
Eacock	622	2,342	2,701	264
Earps Add	189	62	.....	251
N. Emerson	2,771	8,627	9,475	1,917
E. Farley	902	2,769	3,106	567
L. Farley	1,518	13,326	14,207	440
Farley-Fuzzell	561	7,236	7,596	199
Ferguson	309	1,232	1,405	131
Ferndale Comm	4,587	17,422	20,692	1,167
E. Fortson	334	−5	194	134
Fortson-Farley	120	.....	.....	120
Foster	47	50	.....	97
Fox	487	3,156	3,362	268
C. Funk	676	5,213	5,713	173
M. Fuzzell	545	2,321	2,620	246
George	599	314	744	170
Hab-Precure	1,323	6,007	7,186	148
Rosa Hammer	635	5,029	5,395	262
M. Haindl	274	1,880	1,834	320
S. Hiddleston	205	5,712	4,243	1,635
Holmes-Gray	786	1,151	1,387	529
A. Huffman	1,090	3,904	4,696	303
Ivanhoe Add	871	3,757	4,083	544

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Itio Oil Co.

Jennings	524	372	.....	896
B. Johnson	3,117	20,011	22,200	908
Jones Comm	2,295	21,650	23,370	575
H. W. Jones	716	23,791	24,023	506
L. Jones	2,786	54,204	55,125	1,852
Mae Knox	6,037	22,726	21,831	6,932
Lawrence Place	5,399	67,840	72,151	1,221
M. Lawton	566	3,003	3,372	200

Lease	Stock 7 A. M. 5/1/31	Total May production	May pipeline runs	Stock 7 A. M. 6/1/31
Lemmon	1,642	5,361	5,573	1,432
Lindsay	457	3,049	2,582	917
Mackey	393	.....	.....	393
Mag Hts	279	2,125	2,118	288
Mid-Texas	372	3,347	3,576	152
M. K. & T	4,987	48,717	51,580	2,318
Mt. Vernon	707	4,054	1,545	3,205
Okla. City	175	134	.....	309
Okla. State	1,572	73,406	72,874	2,059
Pasadena Hgts	2,467	17,994	19,114	1,349
S. Peterson	524	45,094	45,178	440
Phelands Add	1,066	1,525	2,104	490
W. J. Phillips	780	11,313	11,587	524
C. Precure	847	1,992	2,504	335
E. Precure	1,132	7,949	8,903	204
J. H. Renismer	490	1,579	1,253	817
M. Reynolds	591	592	997	187
Salsman	692	1,992	2,374	311
Spannagel	1,144	12,471	13,063	560
Spillman	2,832	11,203	12,915	1,120
J. Starkey	1,859	8,049	9,541	358
M. Sudik	3,423	80,622	82,350	1,851
E. Theimer	2,318	22,740	24,545	513
Thos. Fuzzell	466	.....	299	167
C. Trosper	3,159	38,845	36,909	4,917
L. E. Trosper	427	206	5,442	194
C. Trosper	1,408	15,724	16,143	941
E. G. Trosper	2,351	34,821	32,434	4,068
H. Trosper	2,017	2,756	4,400	341
C. Trosper	199	398	492	104
Tros Hughes	428	4,310	4,575	163
Terrace Lawn	716	49,335	45,782	4,396
Trosper et al	4,000	27,848	30,201	1,648
Unsel-Krager	859	14,238	14,775	322
Mary Unsel	1,790	9,762	10,976	576
View Point	4,047	113,056	115,233	1,895
Weber-Wall	225	1,169	1,180	215
Werner-Farley	443	6,465	6,461	451
Werner-Speegle	1,236	3,532	3,919	849
M. Warden	560	3,967	4,059	474
Watters	1,080	9,488	10,207	343
J. Wheeland	367	10,405	10,280	487
Wheeler	2,384	4,359	4,699	2,044
Wilkie-Anderson	780	1,248	1,878	142
Williams	603	3,332	3,657	278
Williamson-Canfield	3,490	33,210	33,699	3,003
Worley Hgts	172	.....	.....	172
Hall Station	64,623	.....	.....	21,599
Totals	185,529	1,145,549	1,181,633	106,457
		185,529	106,457	
		1,331,078	1,288,090	
Jones Brothers				
Sullivan	619	13,646	13,810	438
Patterson	689	19,522	19,549	703
Totals	1,308	33,168	33,359	1,141

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C. C. Julian, O. & R. Co.

Lease	Stock 7 A. M. 5/1/31	Total May Production	May Pipeline Runs	Stock 7 A. M. 6/1/31
Houser	975	.....	890	85
Shepard	906	.....	880	26
Walker	477	.....	.....	477
Totals	2,358	.....	1,770	588

Kedberg Oil Co.

Burris	2,403	4,999	7,109	281
Totals	2,403	4,999	7,109	281

Mabee Et Al

Reynolds	1,751	25,162	28,506	367
Rusty Smith	4,378	36,912	34,924	6,088
Ben Mills	1,383	−319	1,365	63
Schillings	4,572	11,468	15,579	290
Totals	12,084	73,223	80,374	6,808

Marco O. & R. Co.

Holder	.....	.....	.....	.....
Totals	.....	.....	.....	.....

Mid-Kansas O. & R. Co.

Browning	137	895	.....	1,031
Fortson	1,016	1,441	2,098	513
Mollman	2,980	14,234	12,742	3,717
Trosp-Browning	1,003	374	402	951
Totals	5,136	16,944	15,242	6,212

Mid-Texas Pet. Corp.

Floral Hills	923	.....	.....	923
Totals	923	.....	.....	923

Minnehoma Oil Co.

Pugh	9,365	38,191	45,790	683
Totals	9,365	38,191	45,790	683

R. A. McArthur

Armourdale	1,694	38,713	38,430	1,976
Totals	1,694	38,713	38,430	1,976

Morgan Pet. Co.

Stout	.....	.....	.....	.....
.....	.....	.....	.....	.....

Johnson-Dabney & Patton

Lease	Stock 7 A. M. 5/1/31	Total May Production	May Pipeline Runs	Stock 7 A. M. 6/1/31
Foote	468	7,402	3,511	4,372
Totals	468	7,402	3,511	4,372

Oils Incorporated

Hathaway	.....	18,782	9,125	9,640
Moreland	1,238	−139	.....	1,091
Ross	2,177	35,159	34,934	2,357
Thompson	11,973	12,722	17,164	7,477
Totals	15,388	66,524	61,243	20,565

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Phillips Pet. Co.

Ashcan	858	39,844	39,970	732
Ball	6,047	9,681	12,716	3,011
Black	10,323	33,206	37,348	6,209
Blazier	9,237	31,194	39,767	662
Burt	452	13,100	13,158	393
Boultinghouse	554	37,086	36,147	1,512
Carey	152	794	.....	946
Crean	366	7,027	16,996	397
Ciger	3,973	45,561	40,191	8,069
Clayton	7,002	24,517	27,625	3,893
Damewood	492	17,639	17,062	765
Day	8,993	37,209	45,651	551
Davis	8,851	40,365	42,545	6,611
Forrester	791	.....	.....	790
Hankins	2,018	3,251	5,123	146
Harrell	873	1,067	1,675	265
Hatcher	5,362	11,274	16,289	481
Hercheck	8,776	31,192	39,273	696
Henderson	.....	6,504	.....	6,504
Higgins	7,484	29,849	36,821	514
Highland	5,918	22,981	28,552	346
Johnson	4,912	3,981	8,286	607
King	8,685	31,077	39,280	481
Kleineggar	665	27,272	24,990	2,953
W. B. Jones	251	2,716	2,117	850
Lybrand	4,415	34,306	31,169	7,556
McBeth	8,653	16,232	23,958	896
McAusland	6,815	33,163	39,249	730
Mosey	449	19,532	19,411	459
Nunn	2,940	42,997	42,579	3,357
Othenin	727	.....	.....	727
Perfy	.....	5,292	.....	5,292
Rallen	478	13,831	11,079	3,231
Roden	905	37,305	39,030	571
Robb	214	1,836	1,685	366
Roose	141	5,369	4,182	1,327
Sam	.....	8,218	3,605	4,608
Schillings	606	.....	.....	606
Temple	486	.....	.....	486
Unruh	9,057	37,581	46,206	430
Velt	314	7,011	5,336	1,988
Winstead	475	9,617	9,652	440
Walnut Grove	824	39,893	40,011	706
Vinita Park	7,548	.....	.....	5,804
Totals	148,082	820,570	878,734	87,964

Plains Pet. Corp.

Lease	Stock 7 A. M. 5/1/31	Total May production	May pipeline runs	Stock 7 A. M. 6/1/31
Sadler	2,166	1,791	.....	3,957
Totals	2,166	1,791	.....	3,957

Prairie Oil & Gas Co.

Hiddleston	1,086	14,082	14,417	643
Sigmon	1,527	20,727	20,762	1,496
Totals	2,613	34,809	35,179	2,139

Reynolds & Unruh

Evans	3,731	15,508	12,244	7,131
Totals	3,731	15,508	12,244	7,131

Russell Pet. Corp.

Reno	2,790	.....	2,537	210
Roosevelt	70	11,291	8,735	2,635
Totals	2,860	11,291	11,372	2,845

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J. C. Shaffer, Inc.

Ar. Baker	2,374	8,215	9,269	1,324
Childs	696	2,832	2,847	660
Cook-Cunningham	4,880	16,079	13,406	7,530
Giles	7,184	6,288	12,579	586
Totals	15,134	33,414	38,101	10,100

Scott & Co.

Ashby	867	116	.....	966
Totals	867	116	.....	966

Shell Pet. Corp.

Egermeier	1,016	2,535	3,233	320
Petty	509	4,187	3,993	1,167
Totals	1,525	6,722	7,226	1,487

Sinclair Oil & Gas Co.

Donnell	1,474	3,710	4,465	724
Kinter	13	.....	.....	13
S. L. #54	12,667	107,262	115,433	3,403
S. L. #67	3,823	20,662	22,180	2,286
S. L. #69	5,111	31,677	35,953	885
Stamper	487	128	.....	616
Vencel	13,438	114,536	124,680	3,422
Farm Tank	7,700	.....	.....	10,626
Totals	44,713	277,975	302,711	21,975

Skelly Oil Co.

Lease	Stock 7 A. M. 5/1/31	Total May production	May pipeline runs	Stock 7 A. M. 6/1/31
Ainsworth	367	7,720	7,165	700
Dillon	396	5,813	5,638	396
Dunn	4,543	10,627	12,568	2,602
Fields	560	17,031	16,651	537
Harper-Turner	8,353	55,510	62,850	1,016
Hoops	748	12,735	12,715	803
Hurt	5,199	42,665	47,299	1,000
Tanner	8,992	41,185	40,934	8,435
Ainsworth	6,255	.....	.....	1,709
Totals	35,413	193,286	205,820	17,198

Slick Urschel Inc.

Alexander	442	23,537	22,718	1,266
Atkinson	7,534	15,135	14,418	8,251
Blevins	1,231	8,641	.....	9,872
Bailey	1,104	6,611	7,152	563
Baker	11,350	17,489	25,836	3,003
Campbell	1,254	88,744	84,568	5,493
Carter	6,275	−492	5,366	400
Central	4,949	4,365	.....	9,310
Classen	2,098	98,747	89,493	11,352
Classen-Edwards	1,089	29,003	29,086	994
Clegg	841	8,021	7,998	810
Crawford	8,051	6,923	9,390	5,650
Danreuther	1,421	11,829	12,129	1,121
Daugherty	6,094	13,575	18,699	970
Dean	489	24,903	24,897	495
Dennis	3,202	4,602	.....	7,804
Dunnivan	4,379	5,040	8,495	929
Egbert	.....	7,911	7,255	740
Foote	4,977	16,526	20,707	796
Foote-Briscoe	1,097	163	.....	1,260
Frost Heights	4,184	14,519	16,900	1,807

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Friscoe	683	23,369	20,152	3,899
C. G. Frost	2,171	2,208	1,367	3,012
Gleason	3,527	4,025	3,652	3,899
Harrison	695	5,480	4,403	1,771
Hoops	1,136	4,604	5,038	702
Houghton	8,593	6,698	10,323	4,967
Houston	410	735	946	189
Huddleston	3,047	2,636	4,585	1,099
Husman	173	.....	.....	173
Key	4,201	−199	.....	4,002
Lard	715	34,157	26,423	8,452
Martin	458	5,512	5,497	473
Miller	363	1,671	.....	2,033
Milner	795	9,662	9,572	1,037
Moore	268	.....	.....	268
Owens	930	26,976	19,568	8,337
Page	457	4,166	2,574	2,053
Rodman	1,246	1,500	.....	2,747
Storie	6,632	5,316	8,643	3,306
Terminal	.....	1,501	.....	1,502
Thornton	392	7,611	7,278	719
Townsend	519	2,071	1,192	1,398
Trumbly	1,474	2,809	3,926	357

Lease	Stock 7 A. M. 5/1/31	Total May production	May pipeline runs	Stock 7 A. M. 6/1/31
Wepaco	1,239	35,335	35,466	1,108
Whitfield	927	27,864	23,375	5,416
Wilson	744	33,989	30,846	3,884
Zercherle	1,857	−208	1,534	116
Alex. Stat	8,048	.....	.....	16,131
Frost Hgts	447	.....	.....	5,018
Totals	124,208	655,280	631,467	160,954
Sunray Oil Co.				
Mead	3,385	40,693	40,129	3,444
Olafson	801	.....	.....	791
R. Donnivan	3,536	43,332	42,951	3,560
Ty Smith	536	.....	440	90
Totals	8,258	84,025	83,520	7,885
Westgate Oil Co.				
Carey	6,358	8,395	2,537	12,154
Kelsey	513	10,751	7,094	4,169
Wilson	517	.....	.....	517
Totals	7,388	19,146	9,631	16,835
Wrightsmith Oil Co.				
Smith	131	3,751	7,070	1,033
Smith	3,061	2,839	.....	1,772
Totals	3,192	6,590	7,070	2,805
H. F. Wilcox Oil & Gas Co.				
McGinnis	.....	5,985	1,414	4,468
Roach	.....	5,922	5,529	347
Short	320	6,405	6,288	854
Wright	320	1,017	.....	1,337
Totals	640	19,329	13,231	7,006
Watchorn Petroleum Co.				
Traders Compress	.....	7,825	.....	7,825
Totals	.....	7,825	.....	7,825
Grand Totals	1,030,136	4,920,702	5,019,545	877,399

[fol. 70] PLAINTIFF'S EXHIBIT 25

Sales Value f.o.b. Enid, Oklahoma, of Refined Products Sold July 1, 1928 to May 31, 1931

	Intrastate	Interstate	Total
Last six months 1928	1,442,675.01	4,052,008.21	5,494,683.22
12 months–1929	2,926,481.10	7,094,114.87	10,020,595.97
12 months–1930	2,200,798.01	6,752,274.31	8,953,072.32
First 5 months–1931	438,126.12	1,540,186.72	1,978,312.84
Grand Total	7,008,080.24	19,438,584.11	26,446,664.35

[fol. 71]

PLAINTIFF'S EXHIBIT 26

Statement of Intrastate and Interstate Sales of Refined Products and Crude Oil

	Sales within Oklahoma		Sales interstate		Total sales	
	Gallons	Barrels*	Gallons	Barrels*	Gallons	Barrels*
Last 6 months 1928:						
Gasoline	10,295,556	245,132.29	40,564,356	965,818.00	50,859,912	1,210,950.29
Kerosene	2,479,265	59,030.12	6,263,546	149,132.05	8,742,811	208,162.17
Fuel Oils	17,467,492	415,892.65	6,920,882	164,782.92	24,388,374	580,675.57
Lubricants	380,434	9,057.95	1,174,473	27,963.64	1,554,907	37,021.59
Total Refined	30,622,747	729,113.01	54,923,257	1,307,696.61	85,546,004	2,036,809.62
Crude Oil	.....	3,635.41	.....	.....	.....	3,635.41
Total for 6 mos. 1928	.....	732,748.42	.....	1,307,696.61	.....	2,040,445.03
12 months 1929:						
Gasoline	22,218,491	529,011.69	68,395,474	1,628,463.66	90,613,965	2,157,475.35
Kerosene	4,597,736	109,469.90	11,433,334	272,222.23	16,031,070	381,692.13
Fuel Oils	44,320,138	1,055,241.38	24,987,514	594,940.81	69,307,652	1,650,182.19
Lubricants	1,209,217	28,790.88	3,203,521	76,274.31	4,412,738	105,065.19
Total refined	72,345,582	1,722,513.85	108,019,843	2,571,901.01	180,365,425	4,294,414.86
Crude oil	.....	463,328.27	.....	50,510.55	.....	513,838.82
Total for 1929	.....	2,185,842.12	.....	2,622,411.56	.....	4,808,253.68

*Barrel of 42 gallons.

[fol. 71.] Statement of Intrastate and Interstate Sales of Refined Products and Crude Oil

	Sales within Oklahoma		Sales interstate		Total sales	
	Gallons	Barrels	Gallons	Barrels	Gallons	Barrels
12 months 1930:						
Gasoline	18,588,819	442,590.93	71,426,036	1,700,619.90	90,014,855	2,143,210.83
Kerosene	3,014,589	71,775.93	12,548,956	298,784.67	15,563,545	370,560.60
Fuel Oils	26,790,388	637,866.38	22,397,826	533,281.57	49,188,214	1,171,147.95
Lubricants	2,016,116	48,002.76	5,296,767	126,113.51	7,312,883	174,116.27
Total refined	50,409,912	1,200,236.00	111,669,585	2,658,799.65	162,079,497	3,859,035.65
Crude oil	.....	838,405.28	.....	.....	.....	838,405.28
Total for 1930	.....	2,038,641.28	.....	2,658,799.65	.....	4,697,440.93
First 5 months 1931:						
Gasoline	5,174,625	123,205.36	24,181,501	575,750.02	29,356,126	698,955.38
Kerosene	1,173,279	27,935.21	5,528,323	131,626.74	6,701,602	159,561.95
Fuel Oils	7,547,960	179,713.33	6,778,939	161,403.31	14,326,899	341,116.64
Lubricants	633,220	15,076.67	2,086,132	49,669.81	2,719,352	64,746.48
Total refined	14,529,084	345,930.57	38,574,895	918,449.88	53,103,979	1,264,380.45
Crude oil	.....	595,431.03	.....	.....	.....	595,431.03
Total for 5 mos. 1931	.....	941,361.60	.....	918,449.88	.....	1,859,811.48
Grand total	167,907,325	5,898,593.42	313,187,580	7,507,357.70	481,094,905	13,405,951.12

[fol. 72] PLAINTIFF'S EXHIBIT 27

Cost of Investment as of May 31, 1931

Plant—	
Refinery and Equipment	$3,840,038.93
Pipe Line	3,146,228.48
Total	$6,986,267.41
Tank Cars Total	$1,295,202.21
Filling Stations and Marketing Equipment:	
Situated within Oklahoma	$1,738,731.40
Situated out of Oklahoma	1,357,950.48
Total	$3,096,681.88
Grand Total	$11,378,151.50

(Here follow Plaintiff's Exhibits 28 and 29, side folios 73 and 74.)

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[fol. 75] PLAINTIFF'S EXHIBIT 30

Gross Production from Leases of 14 Major Operators in Seminole Field from Gross Production Tax Reports Found in the Office of the State Auditor January 1, 1927, to March 31, 1931

Name of company	Gross barrels	
Amerada Petroleum Corporation	26,473,017.58	39 Leases
Barnsdall Oil Corporation	21,489,208.12	38 Leases
Carter Oil Company	47,049,405.32	81 Leases
Dixie Oil Company	4,796,723.21	32 Leases
Empire Oil & Refining Company	6,404,601.39	25 Leases
Gypsy Oil Company	42,096,271.70	94 Leases
I. T. I. O. Company	31,100,932.43	66 Leases
Magnolia Petroleum Company	36,825,854.04	168 Leases
Mid-Continent Petroleum Corporation	22,927,163.74	34 Leases
Pure Oil Company	27,325,399.23	28 Leases
Prairie Oil & Gas Company	41,691,827.27	112 Leases
Shell Petroleum Corporation	9,290,977.70	36 Leases
Skelly Oil Company	8,130,814.73	15 Leases
Texas Company	13,435,952.39	29 Leases
Total	339,038,148.85	

Production from non-taxable leases not shown on gross production reports.

[fol. 76] PLAINTIFF'S EXHIBIT 31

Gross Production from Leases of All Operators in the Oklahoma City Field Who Have Filed Gross Production Tax Reports from Gross Production Tax Reports Found in the Office of the State Auditor July 1, 1929, to March 31, 1931

Anderson-Prichard Oil Company	307,527.12	14 Leases
Blackwell Oil & Gas Company (Jones)	244,896.31	3 Leases
British American Oil Company	866,795.83	3 Leases
Capitol Prod. & Refg. Company	56,636.24	1 Lease
Champlin Refining Company	238,017.53	3 Leases
Coline Oil Company	1,214,564.23	3 Leases
Cromwell-Franklin	2,757,265.45	1 Lease
Denver Prod. & Refg. Company	142,646.78	3 Leases
Donleon Oil Company	16,672.85	1 Lease
Ideon Oil Company (O. C. Pet. Co.)	11,397.14	1 Lease

Wirt Franklin Petroleum Corporation	2,897,404.61X	7 Leases
Hall & Briscoe, Inc	279,171.26X	2 Leases
I. T. I. O. Company	19,863,755.91	102 Leases
C. C. Julian O. & R. Company	41,919.18X	2 Leases
Kedberg Oil Company	37,865.00	1 Lease
J. E. Mabee, et al	243,810.15	3 Leases
R. A. McArthur	32,619.81	1 Lease
Mid-Kansas Oil & Gas Company	1,705,311.03X	5 Leases
Oils, Inc	94,794.06	2 Leases
Phillips Petroleum Company	943,374.76	28 Leases
Plains Petroleum Company	58,598.74	1 Leases
Prairie Oil & Gas Company	1,805,059.80	2 Leases
Reynolds & Unruh	103,524.71	1 Lease
J. C. Shaffer, et al	1,250,054.69	4 Leases
Shell Petroleum Company	840,437.44	3 Leases
Sinclair Oil & Gas Company	4,855,355.29	7 Leases
Skelly Oil Company	1,631,207.48	8 Leases
Slick Estate, et al	1,621,560.90	5 Leases
Sunray Oil Company	283,726.51	5 Leases
Wrightsmith Oil Company	71,865.19	1 Lease
Total	44,527,836.00	

(Here follows Plaintiff's Exhibit 32, side folio 77)

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Vol. II

(EXHIBITS—PART 2)

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1931

No. 485

CHAMPLIN REFINING COMPANY, APPELLANT,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA AND PAUL WALKER, E. R. HUGHES, AND C. C. CHILDERS, ETC., ET AL.

No. 486

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA AND PAUL WALKER, E. R. HUGHES, AND C. C. CHILDERS, ETC., ET AL., APPELLANTS,

vs.

CHAMPLIN REFINING COMPANY

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

FILED OCTOBER 26, 1931

(36,299, 36,300)

(36,299, 36,300)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

No. 485

CHAMPLIN REFINING COMPANY, APPELLANT,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA AND PAUL WALKER, E. R. HUGHES, AND C. C. CHILDERS, ETC., ET AL.

No. 486

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA AND PAUL WALKER, E. R. HUGHES, AND C. C. CHILDERS, ETC., ET AL., APPELLANTS,

vs.

CHAMPLIN REFINING COMPANY

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

VOL. II

(EXHIBITS—PART 2)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 28, 1931

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[fol. 78] PLAINTIFF'S EXHIBIT 33

Abstract of Plaintiff's Exhibits

No. 33. Record, p. 281

Order No. 5189, Dated June 30th, 1930, which order reads as follows:

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause No. 10146. Order No. 5189

In the Matter of the Application of WIRT FRANKLIN for Rules and Regulations to be Established by the Commission to Prevent the Waste of Petroleum in the Oklahoma City, East Earlsboro, South Earlsboro, Marshall-Lovell, Allen Dome, Sasakwa, Konawa, St. Louis, West Asher-Wanette, Chandler, West Perry, Orlando and Township 20 North, Range 4 West, and all Pools in the Greater Seminole Area as Shown by the Map Attached to the Petition Herein, and all Other Producing Areas That May Come Into Production During the Months of July, August and September, 1930, all in the State of Oklahoma.

See 4430 F

ORDER

Comes now Wirt Franklin, petitioner herein, by his counsel, and this matter being set for hearing on this day, and the Commission having heard and considered the evidence of the petitioner, and the evidence of any and all persons opposing said petition, and being advised in the premises, finds as follows:

(a) That the lands covered by this application which will be subject to the rules and regulations established by this Order are those described in "Exhibit B" attached to the petition filed herein, and, specifically, the following pools: Oklahoma City, East Earlsboro, South Earlsboro, Marshall-Lovell, Allen Dome, Sasakwa, Konawa, St. Louis, West Asher-Wanette, Chandler, West Perry, Orlando and Township 20, Range 4 West, and all pools in the Greater Semi-

nole Area, and such new pools and sands as may be brought into production during July, August and September, 1930,

(b) That notice by publication on all persons or classes interested in this proceeding and in the rules and regulations to be established hereby has been given, as required by law, in a newspaper of general circulation in this State, and that, in addition reasonable notice in writing has been served personally on all persons, firms and corporations complained against in this proceeding and due proof of service of notice has been made and filed herein.

(c) The Corporation Commission finds from the evidence that there is an overproduction of crude oil in the State of Oklahoma attended by waste of gas and of gas pressure and that the producers of crude oil in the oil pools described in the Petition herein are threatening to and will, unless restrained by the rules and regulations of the Corporation Commission, commit physical waste of crude oil, economic waste, underground waste, surface waste and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands, and that the commission of such waste is so imminent in each of the areas involved in this proceeding that the orders, rules and regulations prayed for in the Petition herein are necessary in order to prevent such waste.

[fol. 79] The Commission further finds that there is a general overproduction and importation of crude and refined petroleum in the United States, and that this fact tends to reduce the amount of crude oil that can be produced in the State of Oklahoma without waste; that the potential production of crude oil in the United States is at this time approximately 4,730,000 barrels per day, and imports of crude and refined petroleum aggregate about 300,000 barrels per day, thus creating a total possible currect supply of 5,030,000 barrels per day as against an approximate daily demand for domestic use and export of 2,840,000 barrels per day. That by reason of this great oversupply and threatened waste, potential production is now being curtailed in Oklahoma and other producing regions, and unless there is a continuance of curtailment of production in the areas involved herein, the conservation measures now in effect in the other oil producing states may be aban-

doned, thus causing large quantities of petroleum to be produced in such other states in excess of their local demand and forced upon the market to the demoralization of the industry and a consequent reduction in demand for crude oil from Oklahoma, with a corresponding increase in waste in this State and an undue exhaustion of our oil resources. The Commission finds that this petroleum situation constitutes a great state emergency and that the laws of the State of Oklahoma and the powers of the Corporation Commission should be availed of to remove the same.

(d) The Commission further finds from the evidence that, in addition to the excess of potential and actual production and imports over current demand, there are stocks of petroleum on hand in the United States aggregating more than 698,000,000 barrels, which stocks are excessive and beyond the needs of the petroleum industry. That by reason of the excessive supply thus indicated, the purchasers of crude oil in Oklahoma are unwilling to purchase crude oil in Oklahoma for storage purposes in any amount that would be adequate to take care of the surplus of potential production over current demand and that, therefore, there is not sufficient empty tankage available to take care of said excess and unless potential production in Oklahoma is curtailed, much oil would necessarily go to earthen storage where it would evaporate and thus be wasted. The Commission further finds that the storage of oil in Oklahoma under existing conditions would involve waste for the further reason that there is already an excess of stored oil locally, and, there being an oversupply, oil now stored would have to remain in storage for a great length of time and would deteriorate.

(e) The Commission finds from the evidence that in order to curtail the production of crude oil in Oklahoma in a manner to prevent the commission of waste it will be necessary to enforce proportionality of taking from the wells and leases in the flush and semi-flush areas described in the Petition, and that unless such proportionality is required, injustice would be done as between producers in the same pool and as between different pools in that drainage would occur from one lease to another, an undue proportion of the gas pressure would be utilized by some operators to the

detriment of others and unfair discrimination would arise as between pools.

(f) The Commission further finds that the potential production of crude oil from existing wells in Oklahoma on and following the first day of July, 1930, will be approximately 1,362,000 barrels per day, and that the daily demand from Oklahoma is and will be approximately 650,000 barrels per day during the months of July, August and September, 1930. That, therefore, there is an excess of potential production over consumption of 712,000 barrels per day which cannot be produced without waste as defined by the Statutes of Oklahoma.

[fol. 80] The Commission further finds that the above mentioned potential production is only that from the wells which would be permitted to produce under existing orders of this Commission and does not include wells which by said order are required to remain shut-in for the length of time therein prescribed; that if no restraint were placed upon producing wells now completed or upon wells hereafter drilled during the months of July, August and September, the potential production of the State of Oklahoma would be much greater than 1,362,000 barrels per day and would exceed all transportation and marketing facilities and reasonable market demands to such an extent as to force large quantities of oil into earthen storage in this State and otherwise cause waste of a character prohibited by the laws of the State of Oklahoma. In order to prevent such waste, the Commission finds that it is necessary to curtail the production from the pools in the Petition described and each of them during the said months of July, August and September 1930, and according to the subjoined schedule showing the pools to be prorated, the potential production, daily production of each, the percentage of potential production allowanbe in each pool and the resulting production under proration for the said said three (3) months' period, and the shut-in time in each pool:

Potential and Allowed Production, State of Oklahoma, July, August, September, 1930

	July		August		September	
	Est. Potent.	Est. Prod.	Est. Potent.	Est. Prod.	Est. Potent.	Est. Prod.
Production allowed—66 2/3%:						
Allen (Wilcox)	7,000	4,667	6,650	4,433	6,300	4,200
Allen (Cromwell)	18,433	12,289	17,880	11,920	17,880	11,920
Bowlegs	30,056	20,037	29,154	19,436	29,154	19,436
Carr City	11,252	7,501	10,814	7,209	10,490	6,993
Earlsboro (old)	29,585	19,723	28,698	19,132	27,838	18,559
Earlsboro (Towns)	9,000	6,000	8,100	5,400	7,290	4,860
Little River	48,907	32,605	47,440	31,627	46,017	30,678
E. Little River	20,000	13,333	19,000	12,667	18,000	12,000
Marshall-Lovell	6,000	4,000	5,820	3,880	5,645	3,763
Maud	6,262	4,175	6,074	4,049	5,892	3,928
Mission	15,714	10,476	15,243	10,162	14,786	9,857
Sasakwa	10,800	7,200	9,720	6,480	8,750	5,833
Searight	14,235	9,490	13,808	9,205	13,394	8,929
Seminole	30,296	20,197	29,387	19,591	29,387	19,591
East Seminole	4,405	2,937	4,273	2,849	4,145	2,763
St. Louis	40,000	26,666	38,800	25,867	37,636	25,091
Sub-total	301,945	201,297	290,861	193,907	282,604	188,401
Production allowed—33 1/3%:						
East Earlsboro	60,000	20,000 Min.	50,000	20,000 Min.	40,000	20,000 Min.
So. Earlsboro	35,000	11,666	28,000	9,333	20,000	6,666
Sub-total	95,000	31,666	78,000	29,333	60,000	26,666

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	July		August		September	
	Est. Potent.	Est. Prod.	Est. Potent.	Est. Prod.	Est. Potent.	Est. Prod.
Production allowed—25%:						
West Asher-Wanette	16,000	4,000	12,000	3,000	12,000	3,000
Konawa (Adjusted)	80,000	20,000	76,000	19,000	60,000	15,000
Miscl. (Chandler, et al)	8,000	2,000	28,000	7,000	28,000	7,000
Sub-total	104,000	26,000	116,000	29,000	100,000	25,000
Oklahoma City	600,000	130,037	600,000	134,760	600,000	146,933
Wells, in Prorated Areas, Not Prorated	10,000	10,000	10,000	10,000	10,000	10,000
Total-Prorated Areas	1,110,945	399,000	1,094,861	397,000	1,052,604	397,000
Outside Areas Not Prorated	251,000	251,000	253,000	253,000	253,000	253,000
Total State	1,361,945	650,000	1,347,861	650,000	1,305,604	650,000

Schedule of Shut-in Time in Prorated Areas

Area:	No. of days cement to set	No. of days of open flow for test	Days shut down	Total
Oklahoma City	7	1	57	65
East Earlsboro	7	1	41	49
Konawa	7	1	16	24
West Asher-Wanette	7	1	16	24
Marshall-Lovell	7	1	16	24
So. Earlsboro	7	1	16	24
Seminole et al	7	1	16	24

(g) The Commission finds from the evidence that the curtailment and the varying percentages as between pools prescribed in the schedule contained in paragraph (f) herein are necessary and reasonable in order to reduce production in this State to demand and in a manner least injurious to the producers and royalty owners as a whole, and in order to prevent unfair and unreasonable discrimination in favor of any one pool or common source of supply as against another. That the approximate number of wells in the pools described in this Petition is 3,085 and that their aggregate potential production is 1,111,000 barrels, or an average of 360.13 barrels per well per day. The outside of these enumerated pools and in the State at large are some 60,000 older and smaller wells producing in the aggregate and uncurtailed 251,000 barrels daily or an average of 4.18 barrels per well per day. That proration should be applied to the flush and semi-flush pools as distinguished from the old, small wells in the State for the following reasons to-wit: First, that by reason of the large number of said old, small wells and the fact that they are scattered throughout the State, their proration and regulation would present an insuperable administrative difficulty in which it would be impossible to do equity and avoid discrimination as between them. Second: That their production per well is so small that the degree of curtailment which might be enforced would yield a negligible contribution to the amount of reduction [fol. 82] necessary in the State as a whole. Third: That the production per well is only 4.18 barrels, and in the case of some 30,000 of said small wells the per well production

is only one barrel or a fraction thereof per day and because thereof said wells could not pay expenses of operation if their production should be reduced. Curtailing their output would cause thousands of them to be abandoned and their owners to suffer serious financial loss and would cause the waste of a valuable natural resource. Fourth: the great majority of said old, small wells produce large quantities of water along with the oil and must be pumped regularly to prevent ruin by water encroachment. Fifth: as a general rule each of the old, small wells has an established and adequate pipeline outlet. Sixth: and, conversely, the objections in this paragraph enumerated in regard to old, small wells do not apply in as great degree or at all in the case of the flush and semi-flush pools to which proration is sought to be applied. That because of the distinctions between the small wells of this State and the wells in the flush or semi-flush pools, as alleged in this paragraph, said small wells and the production therefrom should be excepted from the rules and regulations prayed for in this proceeding, in order to prevent unreasonable discrimination in favor of one or more common sources of supply of petroleum in this State as against another or other common sources of supply therein.

Why not prorate on basis of pipe line facilities.*

(h) The Commission finds that the varying percentages of curtailment as between pools as set forth in paragraph (f) of this Order are necessary, fair and reasonable because of the peculiar conditions in each case and in this, to-wit: that said pools are not all served in common by the same pipelines and purchasers (See 4430F)*; that the outlet for certain of them is greater in proportion to potential production than in the case of others; that some of them are older than others and have been prorated longer than others, under orders of the Corporation Commission, with a consequent greater reduction in potential flow and smaller, possible production per well per day and are, therefore, accorded a higher percentage allowable production; that in many cases individual pools are served by local purchasers whose facilities cannot be extended to the others, and in certain of the pools the sand and water conditions prevent as great curtailment as is possible in others, and that in certain pools there is a more intensive drilling cam-

* Marginal notes on copy

paign and wells of larger capactiy than in others. The Commission also finds that in the making of said schedule in paragraph (f) the producers and purchasers in all of said pools were consulted and meetings of all of said producers and purchasers were held at which all of the foregoing factors were considered and that said schedule represents the consensus of opinion of said producers and purchasers as to reasonableness of arrangement, necessity and convenience of producers and purchasers and equity as between the various common sources of supply, and was agreed to by all producers and purchasers except one.

(i) The Corporation Commission finds that by virtue of the facts, as herein set forth, (1) that it is necessary to curtail production in each of the pools herein mentioned in order to reduce the output of the State to consumption demands from the State as a whole, and thus to avoid waste, and (2) that the plan and schedule of percentages as contained in paragraph (f) are necessary to be observed in the case of each lease in order to prevent the inequitable or unfair taking by any person, firm or corporation from any one of said pools as a common source of supply and to prevent unreasonable discrimination in favor of any one such common source of supply as against another, and by virtue of the further fact that no one purchaser nor all of the purchasers together and no one pipeline or transporter nor all pipelines and transporters together is or are able or willing to purchase and/or transport all of the oil from all of said pools, it is necessary that each purchaser and [fol. 83] transporter from each of said pools conform and apportion his takings from each lease and pool to the percentages of potential output applicable thereto as set forth in the said schedule contained in paragraph (f) herein.

And said Commission further finds that if any purchaser or transporter should fail or refuse to so conform but should violate the plan as set forth in paragraph (f) by taking more than the due proportion as fixed by said plan, from any lease or leases in the said prorated areas, his action would have the immediate effect of discriminating against any of doing injury to surrounding owners by drainage and disproportionate use of the gas pressure and of creating discrimination as between pools and would have the further effect of hindering, impeding or disrupting the

whole plan or scheme for the prevention of waste as adopted and promulgated by the Corporation Commission. For these reasons the purchaser and transporters now serving each or any of said pools, or who may hereafter do so, are hereby made parties to this proceeding and said purchasers and transporters are hereby prohibited from violating the rules and regulations and orders of the Commission as herein set forth or in any manner aiding or abetting any producer in so doing.

(j) The Corporation Commission further finds that in addition to the prevention of waste of crude oil, the establishment of the curtailment plan in this Order set forth will tend to conserve natural gas and gas pressure in the pools to which it shall be applied.

(k) The Corporation Commission finds that the output from the Oklahoma City pool should be limited to the reasonable market demand from said pool, which at the present time is about 16⅔% of the potential production, but which may increase to as much as 25% of the potential production from said Oklahoma City area and that, therefore, the maximum permitted production should be left at 25% of the potential as in existing orders, and that the Umpire and Operators Committee are authorized to fix, from time to time, the rate of curtailment necessary in said area in order to conform the actual production to the actual demand from that area, with a maximum allowance of 25% of potential; it being understood, however, that whatever demand there is from the Oklahoma City pool shall be prorated among all of the producing leases therein.

(l) With reference to East Earlsboro, the Corporation Commission finds that said pool is on the decline and, owing to the possibility that said decline may be more rapid than is now estimated, it should be ordered that a minimum allowed production of 20,000 barrels per day for the East Earlsboro pool be specified so that, if the application of a curtailment of 66⅔% of the potential should at any time reduce the allowed production below 20,000 barrels per day for the pool as a whole, the Umpire and Operators Committee shall have authority to readjust the percentage so that a minimum production of 20,000 barrels per day from the pool as a whole shall be allowed.

(m) The Corporation Commission finds that new pools or sands which may be opened up between July 1st and September 30th, 1930, should be curtailed 75% of potential until otherwise ordered by the Commission.

[fol. 84] (n) The Corporation Commission further finds that the allegations of the Petition filed herein are true and correct and that accordingly these conditions of waste now exist in said pools, and commission of waste is imminent, and the same should be prohibited and prevented, and the following rules and regulations are necessary, reasonable and appropriate for that purpose.

It is therefore ordered by the Corporation Commission of the State of Oklahoma, as follows:

1

That the following specific orders be and they hereby are established as rules and regulations of this Commission to prevent the waste of petroleum in the Oklahoma City, East Earlsboro, South Earlsboro, Marshall-Lovell, Allen Dome, Sasakwa, Konawa, St. Louis, West Asher-Wanette, Chandler, West Perry, Orlando and Township 20 North, Range 4 West, and all pools in the Greater Seminole Area as shown by map attached to the Petition herein, and all other producing areas that may come into production during the months of July, August and September, 1930, all in the State of Oklahoma.

2

Ray M. Collins is hereby appointed as Umpire and Agent of the Corporation Commission to enforce the rules and regulations herein made, and he is hereby authorized to employ as many assistants as he shall deem necessary. To assist the Umpire in administering these rules and regulations, the following Committees of Operators are appointed as agents of the Corporation Commission for the following named pools respectively:

Allen Pool: R. A. Griffith, Sinclair; C. H. Wright, Sunray; Geo. Moody, Mid-Continent.

Lovell (Logan Co.) Pool: H. D. Aggers, Wentz; Glenn-Haroun, Sinclair; Mr. Bond, Shell; Mr. Church, J. E. Crosbie et al.

Greater Seminole (and East and South Earlsboro and Konawa): J. S. Sidwell, Prairie; J. J. Conry, Carter; R. F. McArthur, Barnsdall; Kenneth-Winship, Gypsy; L. C. Hawkins, Magnolia.

Oklahoma City Pool: M. J. Kirwan, I. T. I. O.; J. S. Sidwell, Prairie; Wirt Franklin, Cromwell-Franklin; Ralph Roark, Shell; Glenn Haroun, Sinclair.

[fol. 85] West Asher-Wanette: Ralph Roark, Shell; J. S. Sidwell, Prairie; M. J. Kirwan, I. T. I. O.

Where percentage proration is applied a gauge of producing wells shall be taken by the Umpire or under his supervision in the following manner: the gauge to determine potential shall be taken by each operator in the pool in respect of the lease or leases owned by him therein and then producing, such gauge to be taken between the hours of seven A. M. on the day set by the Umpire and seven A. M. on the following day. Prior to the taking of such gauge and in respect of each producing lease covered hereby, the Umpire shall appoint a representative of an operator owning a lease adjoining the particular property to be gauged, and shall notify the operator whose property is to be gauged of the name of the representative, such notification to be given prior to the taking of such gauge. It shall be the positive duty of such representative to remain on the lease that is being gauged throughout the entire day that the gauge is being taken to witness the gauging of the production therefrom; and immediately upon the completion of such gauge, such witness and the operator whose property was gauged shall file a written statement with the Umpire showing the production of said lease, and of each well thereon for the day said gauge is taken. The production so shown shall constitute the potential for said lease until the next gauge is taken. During the time this Order is in force a similar gauge of each property shall be taken from time to time as the Umpire may designate but not less than once each month, except that in the entire Greater Seminole area, aside from South Earlsboro, East Earlsboro, East Little River, Sasakwa, Konawa, West Asher-Wanette, Earlsboro Townsite and Wilcox wells in Allen pools, the gauge may, upon direction of the Umpire, be determined by applying the proper decline curve for each lease so gauged.

4

Oklahoma oil production shall be limited to an average of 650,000 barrels per day during each of said months of July, August and September, 1930, plus such increase from the Oklahoma City pool as the reasonable market demand may justify and within the maximum of 25% of potential production, and said figure of 650,000 barrels per day represents the reasonable market demand during said period for the State as a whole and same shall be used as the basis for the limitation of production in this State until the Corporation Commission shall find from evidence that the same should be changed. The curtailment of production in Oklahoma shall be accomplished by a proration of the following producing areas and any extensions thereof, to-wit: Oklahoma City, East Earlsboro, South Earlsboro, Marshall-Lovell, Allen Dome, Sasakwa, Konawa, St. Louis, West Asher-Wanette, Chandler, West Perry, Orlando and Township 20 North, Range 4 West, and all pools in the Greater Seminole Area as shown by map attached to Petition herein.

5

Each person, firm or corporation having the right to drill into and produce oil from any of the pools or areas and extensions thereos that are covered by this order may take from such pool or area and extensions thereof only such proportion of all crude oil and petroleum that may be produced therefrom under this Order as the production of the well or wells of such person, firm or corporation in said pool or area bears to the total potential production of such pool or area. In the case of each such pool or area the Umpire and the Operators' Committee for said pool or area [fol. 86] shall determine whether the production shall be curtailed on a time basis or on the basis of a percentage of potential daily production but such decision shall be reported by the Umpire to this Commission for approval and in no event shall any pool and its extensions be permitted to produce more than its allowable output as fixed by this Order.

6

Beginning July 1, 1930, and continuing until and including September 30th, 1930, the production of all wells in the

following pools shall be curtailed 33⅓% of their potential production: Allen Dome (Wilcox and Cromwell sands), Bowlegs, Carr City, Earlsboro (old), Earlsboro Townsite, Little River, East Little River, Marshall-Lovell, Mission, Sasakwa, Searight, Seminole, East Seminole and St. Louis.

7

Beginning July 1st, 1930, and continuing until and including September 30, 1930, the allowable production of all wells in the Oklahoma City pool shall be that proportion of their potential production that the reasonable market demand from the pool as a whole shall bear to the potential production of the pool as a whole. Provided, that the maximum allowed production shall be 25 Percent of potential production; and, Provided further, that whatever demand for petroleum from the Oklahoma City pool that may exist shall be prorated and allocated among all the producing leases. In case the reasonable market demand shall at any time be less than 25% of the potential production the Umpire and Operators' Committee shall fix such percentage of potential production as will allow a production equal to said reasonable market demand.

8

Beginning July 1, 1930, and continuing until and including September 30, 1930, the production of all wells in the East Earlsboro pool shall be curtailed 66⅔% of the potential production but if at any time the potential production should decline to such an extent that the application of a curtailment of 66⅔% would reduce the allowed production of the pool as a whole below 20,000 barrels per day, then and in that event the Umpire and Operators' Committee shall fix a percentage of potential production which will allow the pool as a whole to produce a minimum of 20,000 barrels per day.

9

Beginning July 1st, 1930, and continuing until and including September 30, 1930, the production of all wells in the South Earlsboro pool shall be curtailed 66⅔% of potential production.

10

Beginning July 1st 1930, and continuing until and including September 30, 1930, the production of all wells in the following named pools and any extensions thereof, together with any new pools that may be opened during said period, shall be curtailed 75% of potential production; West Asher-Wanette, Konawa, Chandler, West Perry, Orlando and Township 20 North, Range 4 West.

11

Where shortages and overages have occurred under previous Orders of this Commission, the same shall be carried [fol. 87] forward and adjusted during the month of July. Any lease showing an average of one barrel or more at August 1st or at the first day of any month thereafter during the life of this Order shall be immediately reported by the Umpire under oath to the Corporation Commission as a basis for citation and such report shall contain in addition to the location of the property and the amount of the overage, the names and addresses of the lessee, the purchaser of the oil and the transporter. Leases which are being gauged according to a decline curve and showing a shortage at the end of any month of more than two days allowed production shall take as their potential for the following month the daily average production of the last ten days of the month. And in the case of such leases, shortages of two days allowable production or less shall be credited on the next month's allowed production.

12

To establish equality between producing wells and drilling wells, each well now drilling in any of said areas, or which may be commenced in said areas or in any new areas prior to September 30, 1930, shall take a delay prior to being brought into production, equal to the accumulated shut-in time and accumulated equivalent time resulting from pinching of producing wells from the beginning of the proration period in each pool, said period of delay to be computed in each instance after allowing seven (7) days for the cement to set: Provided the maximum shut-in time in each of said pools shall be according to the following schedule:

Area	No. of days cement to set	No. of days of open flow for test	Days shut down	Total
Oklahoma City	7	1	57	65
East Earlsboro	7	1	41	49
Konawa	7	1	16	24
West Asher-Wanette	7	1	16	24
Marshall-Lovell	7	1	16	24
South Earlsboro	7	1	16	24
Seminole, et al	7	1	16	24

Previous orders of the Corporation Commission as to wells now completed but not on production shall be continued in effect as to the shutdown requirements therein.

13

That all purchasers and carriers of oil in the State of Oklahoma be and they are hereby forbidden to purchase or car-y oil produced in violation of these Orders of the Commission.

14

In the Konawa, East Earlsboro and South Earlsboro pools, so long as the percentage method of curtailment is used, the same shall be modified as to leases of small production as follows:

Percentage Plan for Konawa Pool

Size of wells (average bbls. per well per lease)	Percent of potential production allowed
Over 400 Barrels	25%
300 - 400 "	30%
[fol. 88] 200 - 300 Barrels	35%
100 - 200 Barrels	50%
Less than 100 Bbls.	66⅔%

Percentage Plan for South Earlsboro and East Earlsboro

Over 300 Barrels	33½%
200 - 300 "	40%
100 - 200 "	50%
Less than 100 Bbls.	66⅔%

Jurisdiction of this cause is hereby retained by the Corporation Commission and notice is hereby given that supplemental and ancillary orders may be made herein from time to time as required by new developments and as instructions to the Umpire and Operators' Committees. When in the judgment of the Umpire or any Operators' Committee any such supplemental or ancillary order shall become necessary the facts supporting the necessity therefor and the reasonableness thereof shall be reported to the Commission for approval, and no exception to these rules and regulations shall be allowed by the Umpire unless approved by such an ancillary order.

Done at Oklahoma City this 30th day of June, 1930.

Corporation Commission of Oklahoma. (Signed) C. C. Childers, Chairman. (Signed) Fred Capshaw, Commissioner. (Signed) E. R. Hughes, Commissioner.

Attest: (Signed) E. D. Hicks, Jr., Secy. (Seal.)

[fol. 89] Order No. 5246, dated July 24th, 1930, which order reads as follows:

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause No. 10146. Order No. 5246

In the Matter of the Application of WIRT FRANKLIN for Rules and Regulations to be Established by the Commission to Prevent the Waste of Petroleum in the Oklahoma City, East Earlsboro, South Earlsboro, Marshall-Lovell, Allen Dome, Sasakwa, Konawa, St. Louis, West Asher-Wanette, Chandler, West Perry, Orlando and Township 20 North, Range 4 West, and All Pools in the Greater Seminole Area as Shown by the Map Attached to the Petition Herein, and All Other Producing Areas that May Come Into Production During the Months of July, August and September, 1930, All in the State of Oklahoma

ORDER MODIFYING THE ORIGINAL ORDER ISSUED IN THIS CAUSE AND AMENDING THE RULES AND REGULATIONS ESTABLISHED THEREBY

Comes now Wirt Franklin and presents his written application in person and by counsel, and this matter being

set for hearing on this day and the Corporation Commission having heard and considered the evidence of the applicant, and the evidence of any and all persons opposing said application, and being advised in the premises, finds as follows:

(a) That the lands covered and affected by this application and which will be subject to the amended rules and regulations established by this order are those described in the original petition herein and in the map attached thereto.

(b) That notice by publication on all persons or classes interested in this proceeding and in the rules and regulations to be established hereby has been given as required by law in a newspaper of general circulation in this state and that, in addition, reasonable notice in writing has been served personally on all persons, firms and corporations complained against in this proceeding.

(c) That since the issuance of the original order herein the potential production of crude oil in the State of Oklahoma has increased to 1,400,523 barrels per day, while the reasonable market demand has decreased from 650,000 barrels to 550,000 barrels per day, a decrease of 100,000 barrels in daily average demand since June 30th.

(d) That it is, therefore, necessary to further curtail the output of crude petroleum in Oklahoma in order to prevent waste as defined by the laws of this State, and that the original order herein should be modified by reducing the percentages of permitted production in the pools herein mentioned by 25% according to the following schedule:

[fol. 90]

Potential and Allowed Production, State of Oklahoma Proration Schedule, July 15, 1930, to September 1, 1930

	July		August	
	Est. potential	Est. production	Est. potential	Est. production
Production allowed—50%				
Allen (Wilcox)	8,212	4,106	6,650	3,325
Allen (Cromwell)	18,970	9,485	17,880	8,940
Bowlegs	30,070	15,035	29,154	14,577
Carr City	10,919	5,460	10,814	5,407
Earlsboro (old)	29,311	14,655	28,698	14,349
Earlsboro Townsite	10,820	5,410	8,100	4,050
Little River	49,070	24,535	47,440	23,720

	July		August	
	Est. potential	Est. production	Est. potential	Est. production
E. Little River	20,541	10,271	19,000	9,500
Marshall-Lovell	6,000	3,000	5,820	2,910
Maud	6,070	3,035	6,074	3,037
Mission	15,756	7,878	15,243	7,622
Sasakwa	10,769	5,385	9,720	4,860
Searight	14,031	7,015	13,808	6,904
Seminole	30,329	15,164	29,387	14,693
E. Seminole	4,405	2,203	4,273	2,137
St. Louis	40,439	20,219	38,800	19,400
Sub-total	305,712	152,856	290,861	145,431
Production allowed—25%				
E. Earlsboro	60,323	15,000 mi.	40,000	15,000min.
S. Earlsboro	43,723	10,931	35,000	8,750
Sub-total	94,046	25,931	75,000	23,750
Production allowed—18 3/4%:				
West Asher-Wanette	19,765	3,706	15,000	2,813
Konawa (Adjusted)	100,000	18,750	80,000	15,000
Miscl. (Chandler et al.)	20,000	3,750	28,000	5,250
Sub-total	139,765	26,206	123,000	23,063
Oklahoma City	600,000	84,007	600,000	94,756
Wells, in Prorated	10,000	10,000	10,000	10,000
Total-Prorated Areas	1,149,523	299,000	1,098,861	297,000
Outside Areas, Not Prorated	251,000	251,000	253,000	253,000
Total State	1,400,523	550,000	1,351,861	550,000

[fol. 91] (e) The Corporation Commission further finds that by applying a unifor- percentage reduction of the original percentages named in the Order of June 30th, the said prorated pools will be maintained in the same relation to each other as under said original order, and that unfair discrimination as between said pools and as between the leases therein will be prevented, and that the adoption of said schedule set forth in paragraph (d) is necessary in order to prevent waste of petroleum.

(f) The Corporation Commission further finds that the reduction of permitted percentages of potential should be made flexible so that, should the demand for Oklahoma crude increase prior to August 31, 1930, the percentage of reduction herein set forth may be reduced upon application of the Umpire supported by evidence.

(g) That accordingly these conditions of waste now exist in said pools or are imminent and such waste should be prevented.

It is therefore ordered by the Corporation Commission of the State of Oklahoma, as follows:

1

That the original order herein be and the same is hereby modified to the following extent, and that the following specific orders be and they hereby are established as rules and regulations of this Commission to prevent the waste of petroleum in the Oklahoma City, East Earlsboro, South Earlsboro, Marshall-Lovell, Allen Dome, Sasakwa, Konawa, St. Louis, West Asher-Wanette, Chandler, West Perry, Orlando and Township 20 North, Range 4 West, and all pools in the Greater Seminole Area as shown by map attached to the original petition herein, and all other producing areas that may come into production during the months of July and August, 1930, all in the State of Oklahoma.

2

Oklahoma oil production shall be limited to an average of 550,000 barrels per day from July 15th to August 31st, 1930, plus such increase from the Oklahoma City pool as the reasonable market demand may justify and within the maximum of 18 3/4% of potential production, and said figure of 550,000 barrels per day represents the reasonable market demand during said period of the state as a whole and same shall be used as the basis for the limitation of production in this state, until, August 31, 1930. The curtailment of production in Oklahoma shall be accomplished by a proration of the following producing areas and any extensions thereof, to-wit: Oklahoma City, East Earlsboro, South Earlsboro, Marshall-Lovell, West Perry, Orlando and Township 20 North, Range 4 West, and all pools in the Greater Seminole Area as shown by map attached to original petition herein.

3

Each person, firm or corporation having the right to drill into and produce oil from any of the pools or areas [fol. 92], and extensions thereof that are covered by this order may take from such pool or area and extensions thereof only such proportion of all crude oil and petroleum that may be produced therefrom under this order as the

production of the well or wells of such person, firm or corporation in said pool or area bears to the total potential production of such pool or area. In the case of each such pool or area the Umpire and the Operators' Committee for said pool or area shall determine whether the production shall be curtailed on a time basis or on the basis of a percentage of potential daily production but such decision shall be reported by the Umpire to this Commission for approval and in no event shall any pool and its extensions be permitted to produce more than its allowable output as fixed by this Order.

4

Beginning July 15, 1930, and continuing until and including August 31, 1930, the production of all wells in the following pools shall be curtailed 50% of their potential production: Allen Dome (Wilcox and Cromwell sands), Bowlegs, Carr City, Earlsboro (old), Earlsboro Townsite, Little River, East Little River, Marshall-Lovell, Maud, Mission, Sasakwa, Searight, Seminole, East Seminole, and St. Louis.

5

Beginning July 15, 1930, and continuing until and including August 31, 1930, the allowable production of all wells in the Oklahoma City pool shall be that proportion of their potential production that the reasonable market demand from the pool as a whole shall bear to the potential production of the pool as a whole. Provided, that the maximum allowed production shall be 18 3/4% of potential production; and Provided further, that whatever demand for petroleum from the Oklahoma City pool that may exist shall be prorated and allocated among all the producing leases. In case the reasonable market demand shall at any time be less than 18 3/4% of the potential production the Umpire and Operators' Committee shall fix such percentage of potential production as will allow a production equal to said reasonable market demand.

6

Beginning July 15, 1930, and continuing until and including August 31, 1930, the production of all wells in the

East Earlsboro pool shall be curtailed 75% of potential production, but if at any time the potential production should decline to such an extent that the application of a curtailment of 75% would reduce the allowed production of the pool as a whole below 15,000 barrels per day, then and in that event the Umpire and Operators' Committee shall fix a percentage of potential production which will allow the pools as a whole to produce a mimimum of 15,000 barrels per day.

7

Beginning July 15, 1930, and continuing until and including August 31, 1930, the production of all wells in the South Earlsboro pool shall be curtailed 75% of potential production.

[fol. 93]

8

Beginning July 15, 1930, and continuing until and including August 31, 1930, the production of all wells in the following names pools and any extensions thereof, together with any new pools that may be opened during said period, shall be curtailed 81¼% of potential production; West Asher-Wanette, Konawa, Chandler, West Perry, Orlando and Township 20 North, Range 4 West.

9

That all purchasers and carriers of oil in the State of Oklahoma be and they are hereby forbidden to purchase or carry oil produced in violation of these orders of the Commission.

10

In the Konawa, East Earlsboro and South Earlsboro pools, so long as the percentage method of curtailment is used, the same shall be modified as to leases of small production as follows:

Percentage Plan for Konawa Pool

Size of wells (Average bbls. per well per lease)	Percent of potential production allowed
Over 400 barrels	18 3/4%
300 - 400 "	22 1/2%
200 - 300 "	26 1/4%
100 - 200 "	37 1/2%
Less than 100 Bbls.	50 %

Percentage Plan for South Earlsboro and E. Earlsboro

Over 300 barrels	25 %
200 - 300 "	30 %
100 - 200 "	37 1/2%
Less than 100 Bbls.	50 %

11

Jurisdiction of this cause is hereby retained by the Corporation Commission and notice is hereby given that supplemental and ancillary orders may be made herein from time to time as required by new developments and as instructions to the Umpire and Operators' Committee. When in the judgment of the Umpire or any Operators' Committee any such supplemental or ancillary order shall become necessary the facts supporting the necessity therefor and the reasonableness thereof shall be reported to the Commission for approval, and no exceptions to these rules and regulations shall be allowed by the Umpire unless approved by such an ancillary order. Except as modified by this order, the original order, rules and regulations issued by the Corporation Commission on June 30, 1930, in this cause shall remain in full force and effect until September 30, 1930. Should the demand for crude oil from the state of Oklahoma increase prior to August 31, 1930, [fol. 94] to such an extent as to permit a greater outlet from the pools herein mentioned, the Umpire shall report the facts to the Commission, together with the recommended percentages and the Corporation Commission hereby gives notice that such revised percentages may be

substituted for the 25% additional reduction provided for in this order.

Done at Oklahoma City This 24 day of July, 1930.

Corporation Commission of Oklahoma. (Signed) C. C. Childers, Chairman. (Signed) —— ——, Commissioner. (Signed) E. R. Hughes, Commissioner.

Attest: E. D. Hicks, Jr., Secy. (Seal.)

[fol. 95] Order No. 5292, dated August 30th, 1930, which order reads as follows:

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause No. 10,146. Order # 5292

In the Matter of the Application of RAY M. COLLINS for Rules and Regulations to be Established by the Commission to Prevent the Waste of Petroleum in the Oklahoma City, East Earlsboro, South Earlsboro, Marshall-Lovell, Allen Dome, Sasakwa, Konawa, St. Louis, West Asher-Wanette, Chandler, West Perry, Orlando, and Township 20 North, Range 4 West, and All Pools in the Greater Seminole Area as Shown by the Map Attached to the Petition Herein, and All Other Producing Areas That May Come Into Production During the Months of July, August and September, 1930, All in the State of Oklahoma

ORDER MODIFYING THE ORIGINAL ORDER ISSUED IN THIS CAUSE AND AMENDING THE RULES AND REGULATIONS ESTABLISHED THEREBY

Comes now Ray M. Collins and presents his written application in person and by counsel, and this matter being set for hearing on this day and the Corporation Commission, having heard and considered the evidence of the applicant and the evidence of any and all persons opposing said application, and being advised in the premises, finds as follows:

(a) That the lands covered and affected by this application and which will be subject to the amended rules and

regulations established by this order are those described in the original petition herein and in the map attached thereto.

(b) That notice by publication on all persons or classes interested in this proceeding and in the rules and regulations to be established hereby has been given as required by law in a newspaper of general circulation in this state and that, in addition, reasonable notice in writing has been served personally on all persons, firms and corporations complained against in this proceeding.

(c) That since the issuance of the original order herein, the potential production of crude oil in the State of Oklahoma has increased to 1,481,118 barrels per day, whole the reasonable market demand has decreased from 650,000 barrels to 550,000 barrels per day, a decrease of 100,000 barrels in dail- average demand since June 30th.

(d) That it is, therefore, necessary to further curtail [fol. 96] the output of crude petroleum in Oklahoma for the month of September, 1930, in order to prevent waste as defined by the laws of this State, and that the original order herein should be modified by reducing the percentages of permitted production in the pools herein mentioned by 25% according to the following schedule:

Potential and Allowed Production, State of Oklahoma Proration Schedule September 1, 1930, to October 1, 1930

Field	September 1930	
	Estimated potential	Estimated production
Production allowed—50%		
Allen (Wilcox)	9,000	4,500
Allen (Cromwell)	17,927	8,964
Bowlegs	28,327	14,164
Carr City	10,494	5,247
Earlsboro (old)	28,665	14,332
Earlsboro Townsite	10,000	5,000
Little River	46,528	23,264
East Little River	22,000	11,000
Marshall-Lovell	5,650	2,825

Field	September 1930 Estimated potential	Estimated production
Maud	5,712	2,856
Mission	14,673	7,337
Sasakwa	9,500	4,750
Searight	13,205	6,602
Seminole	28,470	14,235
East Seminole	4,145	2,072
St. Louis	38,972	19,486
Sub-total	293,268	146,634
Production allowed—25%		
East Earlsboro	40,000	15,000 (min.)
South Earlsboro	35,000	8,750
Sub-total	75,000	23,570
Production allowed—18 3/4%		
West Asher-Wanette	35,000	6,563
Konawa (adjusted)	68,000	12,750
Sub-total	103,000	19,313
Production allowed—Adjusted Maximum		
Tatums	12,000	2,500
Chandler	30,000	2,500
West Perry	1,200	600
Orlando	850	400
Twp. 20 No.—Range 4 West	800	400
Sub-total	44,850	6,400
Oklahoma City	700,000	88,903
Wells in Prorated Areas, Not Prorated	5,000	5,000
Total—Prorated Areas	1,221,118	290,000
Outside Areas—Not Prorated	260,000	260,000
Total State	1,481,118	550,000

[fol. 97] (e) The Corporation Commission further finds that by applying a uniform percentage reduction of the original percentages named in the Order of June 30th, and said prorated pools will be maintained in the same relation to each other as under said original order, and that unfair discrimination as between said pools and as between the leases therein will be prevented, and that the adoption of said schedule set forth in paragraph (d) is necessary in order to prevent waste of petroleum.

(f) The Corporation Commission further finds that the reduction of permitted percentages of potential should be made flexible so that, should the demand for Oklahoma crude increase prior to September 30, 1930, the percentage of reduction herein set forth may be reduced upon application of the Umpire supported by evidence.

(g) That accordingly these conditions of waste now exist in said pools or are imminent and such waste should be prevented.

It is, therefore, ordered by the Corporation Commission of the State of Oklahoma, as follows:

1

That the original order herein be and the same is hereby modified to the following extent, and that the following specific orders be and they hereby are established as rules and regulations of this Commission to prevent the waste of petroleum in the Oklahoma City, East Earlsboro, South Earlsboro, Marshall-Lovell, Allen-Dome, Sasakwa, Konawa, St. Louis, West Asher-Wanette, Chandler, West Perry, Orlando and Township 20 North, Range 4 West, and all pools in the Greater Seminole Area as shown by map attached to the original petition herein, and the extension to the Tatums pool and all other producing areas that may come into production during the month of September, 1930, all in the State of Oklahoma.

2

Oklahoma oil production shall be limited to an average of 550,000 barrels per day from September 1, to September 30, 1930, plus such increase from the Oklahoma City pool as the reasonable market demand may justify and

within the maximum of 17-3/4% of potential production, and said figure of 550,000 barrels per day represents the reasonable market demand during said period for the state at a whole and same shall be used as the basis for the limitation of production in this State, until September 30, 1930. The curtailment of production in Oklahoma shall be accomplished by a proration of the following producing areas and any extensions thereof, to-wit: Oklahoma City, East Earlsboro, South Earlsboro, Marshall-Lovell, Allen Dome, Sasakwa, Konawa, St. Louis, West Asher-Wanette, Chandler, West Perry, Orlando and Township 20 North, Range 4 West, and all pools in the Greater Seminole Area as shown by map attached to original petition herein, and the Tatums Extension as in this order described.

3

East person, firm or corporation having the right to drill into and produce oil from any of the pools or areas and extensions thereof that are covered by this order may take [fol. 98] from such pool or area and extension thereof only such proportion of all crude oil and petroleum that may be produced therefrom under this order as the potential production of the well or wells of such person, firm or corporation in said pool or area bears to the total potential production of such pool or area. In the case of each such pool or area the Umpire and the Operators' Committee for said pool or area shall determine whether the production shall be curtailed on a time basis or on the basis of a percentage of potential daily production but such decisions shall be reported by the Umpire to this Commission for approval and in no event shall any pool and its extensions be permitted to produce more than its allowable output as fixed by this Order.

4

Beginning September 1, 1930, and continuing until and including September 30, 1930, the production of all wells in the following pools shall be curtailed 50% of their potential production: Allen Dome (Wilcox and Cromwell sands), Bowlegs, Carr City, Earlsboro (old), Earlsboro Townsite, Little River, East Little River, Marshall-Lovell, Maud, Mission, Sasakwa, Searight, Seminole, East Seminole and St. Louis.

5

Beginning September 1, 1930, and continuing until and including September 30, 1930, the allowable production of all wells in the Oklahoma City pool shall be that proportion of their potential production that the reasonable market demand from the pool as a whole shall bear to the potential production of the pool as a whole. Provided, that the maximum allowed production shall be 18-3/4% of potential production; and, provided further, that whatever demand for petroleum from the Oklahoma City pool may exist shall be prorated and allocated among all the producing leases. In case the reasonable market demand shall at any time be less than 18-3/4% of the potential production the Umpire and Operators' Committee shall fix such percentage of potential production as will allow a production equal to said reasonable market demand.

6

Beginning September 1, 1930, and continuing until and including September 30, 1930, the production of all wells in the East Earlsboro pool shall be curtailed 75% of potential production, but if at any time the potential production should decline to such extent that the application of a curtailment of 75% would reduce the allowed production of the pool as a whole below 15,000 barrels per day, then and in that event the Umpire and Operators' Committee shall fix a percentage of potential production which will allow the pool as a whole to produce a minimum of 15,000 barrels per day.

7

Beginning September 1, 1930, and continuing until and including September 30, 1930, the production of all wells in the South Earlsboro pool shall be curtailed 75% of potential production.

8

Beginning September 1, 1930, and continuing until and including September 30, 1930, the production of all wells in the following pools and any extensions thereof shall be curtailed 81-1/4% of potential production: West Asher-Wanette and Konawa.

9

Beginning September 1, 1930, and continuing until and including September 30, 1930, the production of the extension of the Tatums Pool, said extension being located in Section 18 and 19, Township 1 South, Range 2 West and Sections 13 and 24, Township 1 South, Range 3 West, shall be curtailed to a maximum production of 2500 barrels per day, as per the following schedule: Wells capable of producing 400 barrels per day or more shall be allowed a maximum production of 100 barrels per well per day; and [fol. 99] wells not capable of producing 400 barrels or more per day shall be allowed a maximum production of 50 barrels per well per day. In the event that the above schedule of maximum production per well does not hold the total production of the area within the maximum of 2500 barrels per day for the whole area, the Umpire and Operators' Committee shall adjust and fix said per well maximums at such figures as will keep the production of the whole area within the allowed 2500 barrels per day.

10

Beginning September 1, 1930, and continuing until and including September 30, 1930, the production of the Chandler Pool and any extensions thereof shall be curtailed to a maximum production of 2500 barrels per day, with the provisions that the maximum production from each and ever- well shall be limited to 100 barrels per day as a maximum. In the event that the above schedule of maximum production per well does not hold the total production of the area within the maximum of 2500 barrels per day for the whole area, the Umpire and Operators' Committee shall adjust and fix said per well maximum at such figure as will keep the production of the whole area within the allowed 2500 barrels per day.

11

Beginning September 1, 1930, and continuing until and including September 30, 1930, the production of the following named pools and any extension thereof shall be limited to the following maximums: West Perry, 600 barrels per day; Orlando, 400 barrles per day; and Township 20 North, Range 4 West, 400 barrels per day.

12

Beginning September 1, 1930, and continuing until further order of this Commission, all wildcat wells completed for crude oil production shall be limited to a maximum daily production of fifty barrels each, so long as no other well is started on any other lease and within one-half (1/2) mile of any such producing wildcat well. If a well is started on any other such lease in the said drainage area, such discovery well shall be permitted to produce to capacity until the second well is completed in the same formation unless the operators in said drainage area agree upon and submit to this Commission for approval a conservation plan of operation for said field; if no such plan is agreed upon and submitted as aforesaid and such subsequent well or wells shall be completed as producers, then all wells shall be curtailed to 50 barrels each per day until further order of this Commission.

13

That all purchasers and carriers of oil in the State of Oklahoma be and they are hereby forbidden to purchase or carry oil produced in violation of these orders of the Commission.

14

In the Konawa, East Earlsboro and South Earlsboro pools, so long as the percentage method of curtailment is used, the same shall be modified as to leases of small production as follows:

Percentage Plan for Konawa Pool

Size of wells (Average bbls. per well per lease)	Percent of pot. prod. allowed
Over 400 barrels	18-3/4%
300 - 400 "	22-1/2%
200 - 300 "	26-1/4%
100 - 200 "	37-1/2%
Less than 100 Bbls.	50%

[fol. 100] Percentage Plan for South Earlsboro and East Earlsboro

Size of wells (Average bbls. per well per lease)	Percent of pot. prod. allowed
Over 300 barrels	25%
200-300 "	30%
100-200 "	37½%
Less than 100 bbls.	50%

15

Jurisdiction of this cause is hereby retained by the Corporation Commission and notice is hereby given that supplemental and ancillary orders may be made herein from time to time as required by new developments and as instructions to the Umpire and Operators' Committee. When in the judgment of the Umpire or any Operators' Committee any adjustment or fixing of percentages or well production as provided in this order shall be proper, or as any such supplemental or ancillary order shall become necessary the facts supporting the necessity therefor and the reasonableness thereof shall be reported to the Commission for approval, and no exception to these rules and regulations shall be allowed by the Umpire, nor shall any adjustment of percentages or well production become effective, unless approved by such an ancillary order of this Commission. Except as modified by this Order, the original order, Rules and Regulations issued by the Corporation Commission on June 30, 1930, in this cause shall remain in full force and effect until September 30, 1930. Should the demand for crude oil from the State of Oklahoma increase prior to September 30, 1930, to such an extent as to permit a greater outlet from the pools herein mentioned, the Umpire shall report the facts to the Commission, together with the recommended percentages, and the Corporation Commission hereby gives notice that such revised percentages, may be substituted for the 25% additional reduction provided for in this order.

Done at Oklahoma City this the 30th day of August, 1930.

Corporation Commission of Oklahoma. (Signed) C. C. Childers, Chairman, —— ——, Commissioner. (Signed) E. R. Hughes, Commissioner.

Attest: (Signed) E. D Hicks, Jr., Secy. (Seal.)

[fol. 101] Order No. 5337, dated September 30th, 1930, which order reads as follows:

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause No. 10146. Order No. 5337

In the Matter of the Application of RAY M. COLLINS for Rules and Regulations to be Established by the Commission to Prevent the Waste of Petroleum in the Oklahoma City, East Earlsboro, South Earlsboro, Marshall-Lovell, Allen Dome, Sasakwa, Konawa, St. Louis, West Aster-Wanette, Chandler, West Perry, Orlando and Township 20 North, Range 4 West, and All Pools in the Greater Seminole Area as Shown by the Map Attached to the Petition Herein, and All Other Producing Areas That May Come Into Production During the Months of July, August and September, 1930, All in the State of Oklahoma

Order No. 5337

Upon consideration of the verified application of Ray M. Collins in the above entitled cause and of the matters and things now adduced in support thereof, the Commission finds that the potential production of crude oil in the State of Oklahoma far exceeds the market demand and transportation facilities therefor, that by reason of pending litigation it is inexpedient to undertake at this time a new investigation into the matters involved in the Orders to which reference is hereinafter made, but that to prevent waste in the production of crude oil in the State of Oklahoma it is necessary and proper that the proration plan now in force be carried forward temporarily by order supplemental to those now in force until a decision upon the rights and powers of this Commission has been reached by the Courts, and that it is reasonable to assume that a decision thereon will be handed down in the near future.

It is therefore ordered that Order No. 5189 of this Commission as modified by Orders No. 5246 and 5292 and all supplemental orders be and the same is hereby extended in force until and including the 10th day of October, 1930.

Done by the Corporation Commission of Oklahoma at its office in the State Capitol at Oklahoma City, Oklahoma, this 30th day of September, 1930.

Corporation Commission of Oklahoma. (Signed) C. C. Childers, Chairman. (Signed) Fred Capshaw, Commissioner. (Signed) E. R. Hughes, Commissioner.

Attest: (Signed) E. D. Hicks, Jr., Secy. (Seal.)

[fol. 102] Order No. 5343, dated October 6th, 1930, which order reads as follows:

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause No. 10146. Order No. 5343

In the Matter of the Application of WIRT FRANKLIN for Rules and Regulations Governing the Production of Oil in Certain Pools Within the State of Oklahoma

FINDINGS OF FACT, OPINION AND ORDER

Throughout the past several months the Commission has conducted numerous investigations under the above numbered cause, and has made numerous orders restricting, curtailing and prorating oil production within the various flush pools of the State of Oklahoma. On September 30th, 1930, it made and entered its Order No. 5337 extending in force and effect Orders No. 5246 and 5292 together with other supplemental orders looking to the prevention of waste and the restricting and curtailment of the production of oil in the Oklahoma City oil field as one of the flush producing oil pools of the State of Oklahoma.

By the terms and provisions of these orders, an Umpire was selected and appointed by the Commission, subject to the approval of the Governor, and an Operators' Committee was also designated for each of said flush pools, including the Oklahoma City oil pool. This cause has never been closed and has been left open for the purpose of making additional and supplemental orders based upon changed conditions and based upon recommendations and showings made to the Commission by the Umpire and the

various Operators' Committees named in the orders mentioned above.

On October 6th, 1930, Otto B. Bradford, Umpire of the Oklahoma City oil field, and M. J. Kirwan, Chairman of the Operators' Committee for the Oklahoma City oil field, filed their report with this Commission as authorized by the terms and provisions of said orders and by action authorized by the Operators' Committee designated for the Oklahoma City oil field, as provided by the terms of said order. The report is as follows, to-wit:

Report

"One. That, in the application of the Orders of the Commission in the above entitled cause in the Oklahoma City Field; the bringing in of many new wells of wholly unexpected size and other conditions in the field, have resulted in certain producers being so far unable to obtain pipe line or other outlet for any part of the oil which said company would be entitled to produce under said Order, and have resulted in certain companies which have produced oil within the terms of said Order being unable to run the said oil, and have resulted in certain companies being unable to produce their properties and wells within the terms of said Order.

Two. That by reason of the matters stated above, there are now approximately twenty producers who do not have pipe line connections and who are under-produced under the terms of said Order; that, as nearly as can be estimated, the total amount of under-production within the terms of said Order in the Oklahoma City Field, is approximately [fol. 103] 1,209,000 barrels as of September 25th, 1930, and that the additional amount which has been produced within the terms of said order of which has not been run and is in storage on the leases amount to 1,333,000 barrels, making a total of under-run and under-produced oil of 2,542,000 barrels.

The Umpire and Operators' Committee regard it as unfair that leases which have obtained outlet for the entire amount of oil produced by them under the Order should continue to produce in full under said Order while other leases are totally unable to run any amount of oil and there-

fore recommends to the Commission that some Order be immediately made which will permit the under-run and under-produced leases to be placed upon a parity with other leases in the field. To that end, the Umpire and Operators' Committee recommend that the Commission enter a supplemental Order putting into effect the following program to-wit:

"That all new wells being brought on production produce for a period of eight hours for test, that the remainder of the twenty-four hour test period (namely sixteen hours) be allowed the said well upon its completion of its sixty-five day shut down time; that all wells that are now serving their sixty-five day shut down time, be permitted to produce a maximum of eight hours in each twelve day period following the completion of their sixty-five day shut down time; that all wells that are now on production schedule be likewise permitted to produce a maximum of eight hours in each twelve day period; that the amount of time that wells in the Oklahoma City Field are permitted to produce during each twelve day period should be revised when the wells that are now under-produced and the oil that is now in storage has been run to the pipe lines."

"The Committee further recommends that any Order made by the Commission in the premises, be made effective as of seven o'clock A. M., October 7th, 1930, at which time a new twelve day period of production will begin.

Respectfully submitted.

(Signed) Otto B. Bradford, Umpire Oklahoma City Field. M. J. Kirwan, Chairman Operators' Committee Oklahoma City Field."

Now on this the 6th day of October, 1930, the Commission having under consideration the matters and things involved and contained in said Report, together with the testimony taken by the Commission in previous gearings involving the waste of crude oil in the Oklahoma City Oil Field, and the necessary and legal provisions appropriate to prevent said waste, is of the opinion and finds:

First. That certain oil producers in the Oklahoma City Oil Field have been unable to obtain pipe line or other outlets for any part of the oil which they would be entitled to produce under the terms and provisions of the order now

in effect, which condition has resulted in certain companies which have produced oil within the terms of said order being unable to run the said oil, thus resulting in certain companies being unable to produce their properties and wells within the terms and provisions of said order.

[fol. 104] Second. That there are now approximately twenty producers not having pipe line connections, and who, by reason of such fact are under-produced under the terms of the order now in effect.

Third. That the total amount of under-production within the terms of said Order in the Oklahoma City Field, is approximately 1,209,000 barrels as of September 25th, 1930, and that the additional amount which has been produced within the terms of said Order and which has not been run except to storage and which is now in storage on the leases, amounts to 1,333,000 barrels, making a total of under run and under produced oil in said field of 2,542,000 barrels.

Fourth. That from the testimony taken at the various hearings by the Commission and from the Report of the Umpire and the Operators' Committee, it is abviously unfair that leases having outlet to the entire amount of oil produced by them under the Order of the Commission, should be permitted to continue to produce in full under said order, while other leases are unable to run their oil or any part thereof.

Fifth. That the recommendation and report of the Umpire and Operators' Committee filed with this Commission on October 6th, 1930, should be approved and the relief suggested by said Umpire and Operators' Committee, should be granted by supplemental order.

It is therefore the order of the Commission, premises considered, that commencing at seven o'clock A. M., October 7th, 1930, the following supplemental rule with respect to the production of crude oil in the Oklahoma City Oil Field, be and the same is hereby put in force and effect, to-wit:

"That all new wells being brought on production produce for a period of eight hours for test, that the remainder of the twenty-four hour test period (namely sixteen hours) be allowed the said well upon its completion of its sixty-five

day shut down time; that all wells that are now serving their sixty-five day shut down time, be permitted to produce a maximum of eight hours in each twelve day period following the completion of their sixty-five day shut down time; that all wells that are now on production schedule be likewise permitted to produce a maximum of eight hours in each twelve day period; that the amount of time that wells in the Oklahoma City Field are permitted to produce during each twelve day period should be revised when the wells that are now under-produced and the oil that is now in storage has been run to the pipe lines."

This order to be in full force and effect from and after its promulgation.

Done at Oklahoma City this the 6th day of October, 1930. Corporation Commission of Oklahoma. (Signed) C. C. Childers, Chairman. (Signed) Fred Capshaw, Commissioner. (Signed) E. R. Hughes, Commissioner.

Attest. (Signed) E. D. Hicks, Jr., Secy. (Seal.)

[fol. 105] Order No. 5345, dated October 10th, 1930, which order reads as follows:

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause No. 10146. Order No. 5345

In the Matter of the Adoption and Promulgation of Rules and Regulations for the Prevention of Waste of Crude Oil and Petroleum Products in the Oklahoma City, East Earlsboro, South Earlsboro, Marshall-Lovell, Alien Dome, Sasakwa, Konawa, St. Louis, West Asher-Wanette, Chandler, West Perry, Orlando and Township 20 N. Range 4 West, and All Pools in the Greater Seminole Area as Shown by the Records in This Cause, and All Other Producing Areas That May Come Into Production During the Months of July, August and September, 1930, All in the State of Oklahoma

ORDER

Pursuant to Sec. 7957, 7958 and 7959 C.O.S. 1921, the Corporation Commission has heretofore promulgated Orders No. 5189, 5246, 5337 and 5343 all looking to the preven-

tion of waste of crude oil and petroleum products within the State of Oklahoma and within the areas of the following pools, to-wit: Oklahoma City, East Earlsboro, South Earlsboro, Marshall-Lovell, Allen Dome, Sasakwa, Konawa, St. Louis, West Asher-Wanette, Chandler, West Perry, Orlando and Township 20 North, Range 4 West, and all pools in the Greater Seminole Area, as shown by the map on file in this cause and attached to the petition herein, and all other producing areas that may have come into production during the months of July, August and September, 1930, within the State of Oklahoma.

At the present time the Commission has under consideration and is engaged in the hearing of an application for an additional proration order covering the entire producing oil areas of the State of Oklahoma, and it appears to the Commission that it will be unable to conclude said hearing by the time of the expiration of the present effective orders looking to the prevention of waste and the restriction of oil output to meet market demands and transportation facilities, to-wit: Orders 5189, 5246, 5337 and 5343. The orders mentioned expire at midnight on the 10th day of October, 1930.

Now on this the 10th day of October, 1930, the Commission having under consideration the various verified applications in this cause upon which each of said orders have been based, together with the fact that the order is made pursuant to hearings had thereupon expires on October 10, 1930, is of the opinion and finds:

First. That it appears to be impossible to close the case now under consideration and which is in the process of hearing, in time to promulgate an order to take effect at the time of the expiration of Order No. 5189, 5246, 5337 and 5343.

[fol. 106] Second. That said orders pending the conclusion of the cause now being heard, should be extended and continued in full force and effect in the interest of the prevention of waste and the conservation of crude oil and petroleum products until such time as the present cause now being heard, may be determined and an order promulgated pursuant thereto.

Third. That Orders No. 5189, 5246, 5337 and 5343, should be extended by the Commission on its own motion until and

including the 20th day of October, 1930, or until further order of the Commission.

It is therefore the order of the commission, premises considered, that for the prevention of waste of crude oil and petroleum products within the State of Oklahoma and the pools described herein, Orders No. 5189, 5246, 5337 and 5343, together with other supplemental orders, be and the same are hereby extended in full force and effect until and including the 20th day of October, 1930, and until further order of this Commission.

Done at Oklahoma City this the 10th day of October, 1930:

Corporation Commission of Oklahoma. (Signed) C. C. Childers, Chairman. (Signed) Fred Capshaw, Commissioner. (Signed) E. R. Hughes, Commissioner.

Attest: (Signed) E. D. Hicks, Jr., Secy. (Seal.)

[fol. 107] No. 5369, dated October 28, 1930, which order reads as follows:

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause No. 10326. Order No. 5369

In the Matter of the Application of WIRTH FRANKLIN for Rules and Regulations to be Established by the Commission to Prevent Waste of Petroleum in the Producing Oil Fields of the State of Oklahoma.

ORDER

Comes now petitioner herein and various and sundry producers of oil in the State of Oklahoma, and this matter having been set for hearing on this 10th day of October, 1930, and the Commission having heard and considered the evidence of the petitioner and sundry other persons, and the evidence of any and all persons opposing the petition and the supplemental petition herein, and the Commission having made an investigation of the facts alleged and of the conditions in the oil fields of Oklahoma, and being fully advised in the premises, finds as follows:

(a) That areas to be covered by the rules and regulations herein prayed for are all of the oil producing areas in

the State of Oklahoma and those new sands or areas which may be brought into production during the months of October, November and December, 1930.

(b) That notice by publication on all persons or classes interested in this proceeding and in the rules and regulations to be established hereby has been given, as required by law, in a newspaper of general circulation in this State, and that, in addition, reasonable notice in writing has been served personally on all persons, firms and corporations known to petitioner to be interested in this proceeding and due proof of service of notice has been made and filed herein.

(c) The Corporation Commission finds from the evidence that there is an overproduction of crude oil in the State of Oklahoma attended by waste of gas and of gas pressure and that the producers of crude oil in the oil pools of Oklahoma are threatening to and will, unless restrained by the rules and regulations of the Corporation Commission, commit physical waste of crude oil, economic waste, underground waste, surface waste and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands, and that the commission of such waste is so imminent in each of the areas involved in this proceeding that orders, rules and regulations of this Commission are necessary in order to prevent such waste.

The Commission further finds that there is a general overproduction and importation of crude and refined petroleum in the United States, and that this fact tends to reduce the amount of crude oil that can be produced in the State of Oklahoma without waste; that the potential production of crude oil in the United States is at this time approximately 10,000,000 barrels per day, and imports of crude and refined petroleum aggregate about 300,000 barrels per day, thus creating a total possible current supply of 10,300,000 barrels per day as against an approximate daily demand for domestic use and export of 2,800,000 bar- [fol. 108] rels per day. That by reason of this great over supply and threatened waste, potential production is now being curtailed in Oklahoma and other producing regions, and unless there is a continuance of curtailment of production in the areas involved herein, the conservation measures

now in effect in the other oil producing states may be abandoned, thus causing large quantities of petroleum to be produced in such other state in excess of their local demand and forced upon the market to the demoralization of the industry and a consequent increase in waste in this State and an undue exhaustion of our oil resources. The Commission finds that this petroleum situation constitutes a great state emergency and that the laws of the State of Oklahoma and the powers of the Corporation Commission should be availed of to remove the same.

(d) The Commission further finds from the evidence that, in addition to the excess of potential and actual production and imports over current demand, there are stocks of petroleum on hand in the United States aggregating more than 685,000,000 barrels, which stocks are excessive and beyond the needs of the petroleum industry. That by reason of the excessive supply thus indicated, the purchasers of crude oil in Oklahoma are unwilling to purchase crude oil in Oklahoma for storage purposes in any amount that would be adequate to take care of the surplus of potential production over current demand and that, therefore, there is not sufficient empty tankage available to take care of said excess and unless potential production in Oklahoma is curtailed, much oil would necessarily go to earthen storage where it would evaporate and escape and thus be wasted. The Commission further finds that the storage of oil in Oklahoma under existing conditions would involve waste for the further reason that there is already an excess of stored oil locally and, there is being an oversupply, oil now stored would have to remain in storage for a great length of time and would deteriorate.

(e) The Commission finds from the evidence that in order to curtail the production of crude oil in Oklahoma in a manner to prevent the commission of waste and to protect the coequal rights of producers in each pool, it will be necessary to enforce proportionality of taking from the wells and losses in each of the pools where the potential production thereof exceeds the reasonable market demand therefrom, and that unless such proportionality is required, injustice would be done as between producers in the same pool in that drainage would occur from the less active leases or wells to the more active leases or wells, and undue proportion of

the gas pressure would be utilized by some operators to the detriment of others and unfair discrimination would arise as between pools.

(f) The Commission further finds that the potential daily production of crude oil from the wells in Oklahoma during the month of October, 1930, is and will be approximately 3,638,478 barrels and that during the months of November and December, 1930, the said potential daily production will be 4,142,872 barrels and 4,244,294 barrels respectively, and that the daily demand for crude oil from Oklahoma is and will be approximately 550,000 barrels in October, 545,000 barrels in November and 535,000 barrels in December, 1930. That therefore, and by reason of the facts found in this order, the potential production from each of the pools and classes of pools involved in this proceeding is so far in excess of the reasonable market demand that the full potential production cannot be produced without waste.

[fol. 109] The Commission further finds that the above mentioned potential production is only that from the wells which would be permitted to produce under this and preexisting orders of this Commission and does not include wells which by said orders are required to remain shut-in for the length of time therein prescribed; that if no restraint were placed upon producing wells or wells now completed or upon wells hereafter drilled during the months of October, November and December, the potential production of the State of Oklahoma would be much greater than that above stated and would exceed all transportation and marketing facilities and reasonable market demands to such an extent as to force large quantities of oil into earthen storage in this State and otherwise cause waste of a character prohibited by the laws of the State of Oklahoma. In order to prevent such waste, the Commission finds that it is necessary to curtail the production from the pools in this State and each of them during the said months of October, November and December, 1930, and acccording to the subjoined schedule showing the classes of pools to be prorated, the potential production of each, the estimated daily production of each under proration and the percentage of potential production allowable in each pool and the resulting, total production, under proration, for the said three (3) months period.

{fol. 110} Suggested Potential and Allowed Production of Crude Oil, State of Oklahoma Proration Schedule**
October 1, 1930, to December 31, 1930

	October		November		December	
	Estimated potential	Estimated production	Estimated potential	Estimated production	Estimated potential	Estimated production
Class A Pools:	259,280	202,965	257,040	201,770	254,950	200,725
Class B:						
Allen (Wilcox)	8,825	4,413	8,335	4,168	7,920	3,960
Allen (Cromwell)	17,389	8,695	16,867	8,433	16,361	8,180
Bowlegs	27,477	13,734	26,653	13,326	25,853	12,927
Earlsboro (proper)	27,805	13,903	26,971	13,485	26,162	13,081
Earlsboro Townsite	10,000	5,000	9,700	4,850	9,400	4,700
Little River	45,132	22,566	43,778	21,889	42,465	21,232
East Little River	23,482	11,741	22,700	11,350	22,000	11,000
Marshall-Lovell	5,000	2,500	5,000	2,500	4,500	2,250
Maud	5,541	2,771	5,375	2,688	5,214	2,607
Mission	14,233	7,117	13,806	6,903	13,392	6,696
Sasakwa	10,300	5,150	9,785	4,893	9,295	4,648
Searight	12,809	6,405	12,425	6,212	12,052	6,026
Seminole	27,616	13,808	26,788	13,394	25,984	12,992
East Seminole	4,021	2,011	3,900	1,950	3,783	1,892
St. Louis	37,803	18,902	36,669	18,334	35,569	17,784
Sub-total	277,433	138,716	268,752	134,375	259,950	129,975
Class C:						
Carr City	22,415	6,936	25,965	7,783	28,510	8,380
South Earlsboro	36,000	9,000	33,000	8,250	30,000	7,500
Sub-total	58,415	15,936	58,965	16,033	58,510	15,880
Class D:						
Konawa	89,500	18,188	88,365	17,933	84,234	17,117

Class E:						
East Earlsboro	45,000	15,000	43,000	15,000	40,000	15,000
West Asher-Wanette	50,000	7,200	45,000	7,200	41,000	7,200
Sub-total	95,000	22,200	88,000	22,200	81,000	22,200
Class F:						
Tatums	18,000	4,000	15,000	4,000	12,000	4,000
Chandler	25,000	2,500	25,000	2,500	25,000	2,500
Sub-total	43,000	6,500	40,000	6,500	37,000	6,500
Class G:						
West Perry	1,200	600	1,150	600	1,100	600
Orlando	850	400	825	400	800	400
Twp. 20 N., R. 4 W.	800	400	775	400	750	400
Sub-total	2,850	1,400	2,750	1,400	2,650	1,400
Class H:						
Oklahoma City	2,800,000	131,095	3,319,000	134,589	3,446,000	131,003
Wild cat Wells	3,000	3,000	10,000	200	10,000	200
New Wells (Outside of Oklahoma City) Free Production.						
For Testing	5,000	5,000	5,000	5,000	5,000	5,000
Unprorated Small Wells in Prorated Areas	5,000	5,000	5,000	5,000	5,000	5,000
Total State	3,638,478	550,000	4,142,872	545,000	4,244,294	535,000

**Note: See detailed description of curtailment procedure for each class of pools.

[fol. 111] (g) The Commission finds from the evidence that the curtailment and the varying percentages as between pools prescribed in the schedule contained in paragraph (f) herein are necessary and reasonable in order to reduce production in this State to the reasonable market demand and in a manner least injurious to the producers and royalty owners as a whole, and in order to prevent unfair and unreasonable discrimination in favor of any one pool or common source of supply as against another.

The Commission finds that the varying percentage of curtailment as between pools as set forth in paragraph (f) of this order are necessary, fair and reasonable, because of the peculiar conditions in each case and in this, to-wit: that said pools are not all served in common by the same pipelines and purchasers; that the reasonable market demand from certain of them is greater in proportion to potential production than in the case of others; that some of them are older than others and have been prorated longer than others, under orders of the Corporation Commission, with a consequent greater reduction in potential flow and smaller possible production per well per day and are, therefore, accorded a higher percentage allowable production; that in many cases individual pools are served by local purchasers whose facilities cannot be extended to the others, and in certain of the pools the sand and water conditions prevent as great curtailment as is possible in others, and that in certain pools there is a more intensive drilling campaign and wells of larger capacity than in others. The Commission also finds that in the making of said schedule in paragraph (f) the producers and purchasers in all of said pools were consulted and meetings of said producers and purchasers were held at which all of the foregoing factors were considered and that said schedule represents the consensus of opinion of said producers and purchasers as to reasonableness of arrangement, necessity and convenience of producers and purchasers and equity as between the various common sources of supply.

The Commission finds that the basis of classification of pools for the application of the varying percentages of curtailment as shown by the schedule in paragraph (f) herein is the existing relation between the potential production of each pool and the amount of crude oil which can be produced

from said pool without waste. That because said relation is not the same in all the pools involved, the percentages of curtailment must necessarily vary as between pools. A uniform percentage applied to all pools would result in the permitted production from some of them being less than the reasonable market demand therefrom, while in others the permitted production resulting from such uniform percentage would exceed the amount which could be produced therefrom without waste.

(h) The Corporation Commission finds that by virtue of the facts, as herein set forth, (1) that it is necessary to curtail production in each of the pools herein mentioned in order to reduce the output of the State to reasonable market demands from the State as a whole, and thus to avoid waste, and (2) that the plan and schedule of percentages as contained in paragraph (f) are necessary to be observed in the case of each lease in order to prevent the inequitable or unfair taking by any person, firm or corporation from any one of said pools as a common source of supply and to prevent [fol. 112] unreasonable discrimination in favor of any one such common source of supply as against another, and by virtue of the further fact that no one purchaser nor all of the purchasers together and no one pipeline or transporter nor all pipelines and transporters together is or are able or willing to purchase and/or transport all of the oil from all of said pools, it is necessary that each purchaser and transporter from each of said pools conform and apportion his takin-s from each lease and pool to the percentages of potential output applicable thereto as set forth in the said schedule contained in paragraph (f) herein.

And said Commission further finds that if any purchaser or transpo ter should fail or refuse to so conform but should violate the plan as set forth in paragraph (f) by taking more than the due proportion as fixed by said plan, from any lease or leases in the said prorated areas, his action would have the immediate effect of discriminating against and of doing injury to surrounding owners by drainage and disproportionate use of the gas pressure and of creating discrimination as between pools and would have the further effect of hindering, impeding or disrupting the whole plan -r scheme for the prevention of waste as adopted and promulgated by the Corporation Commission. For these

reasons the purchasers and transporters now serving each or any of said pools, or who may hereafter do so, are hereby made parties to this proceeding and said purchasers and transporters are hereby prohibited from violating the rules and regulations and orders of the Commission as herein set forth or in any manner aiding or abetting any producer in so doing.

(i) The Corporation Commission further finds that in addition to the prevention of waste of crude oil, the establishment of the curtailment plan in this order set forth will tend to conserve natural gas and gas pressure in the pools to which it shall be applied.

(j) The Commission finds that since the making and issuance of Order 5189 in Cause No. 10,146, the potential production of the Oklahoma City pool has increased to approximately 2,800,000 barrels per day and, by reason of the large number of wells now drilling or awaiting production in said pool, such potential will probably increase to 3,319,000 barrels per day in November and to 3,446,000 barrels per day in December. That the reasonable market demand for oil in said pool heretofore existing has been so small in proportion to the present potential production that it is necessary, if possible, that the market outlet from said pool be increased in order to prevent unreasonable discrimination against said Oklahoma City pool. In this connection, the Commission finds that a number of purchasing companies desire to and have already reduced the amount of their purchases in the so-called older pools in the State not heretofore prorated under order of this Commission, and that said purchasers desire to purchase a greater amount of oil in the Oklahoma City pool than they have heretofore taken. The Commission further finds that, by reason of the readjustment of purchases as herein stated as between pools not heretofore prorated and the Oklahoma City pool, the potential production of said pools not heretofore prorated will exceed the reasonable market demand therefrom, and that it is necessary to now prorate said older pools, which are hereby designated as "Class A" pools. That it is necessary to curtail the output from said "Class A" pools 50% of the excess in each pool over and above an average of 5 barrels per well per day and that this curtailment is neces-

sary in order to avoid discrimination as between the said [fol. 113] "Class A" pools themselves and as between the said "Class A" pools and the other pools of the State and to prevent waste of crude oil in said "Class A" pools and to protect the coequal rights of the producers therein.

The Commission further finds from the evidence that the best manner of applying curtailment of said "Class A" pools, is as follows; to-wit: That in each of said "Class A" pools all leases therein where the per well average per day is five barrels or less should be exempted from curtailment or proration because to curtail or prorate said 5 barrel well or wells making less than 5 barrels would be to reduce the gross income therefrom below the cost of operation and thus compel their abandonment which would constitute a waste of an irreplaceable natural resources, and for the further reason that many of such wells produce water along with the oil and it is necessary to pump them each dau in order to prevent their injury by water encroachment. That in each of saic "Class A" pools each lease should receive said exemption up to an average of 5 barrels per well per day but in the case of those leases where the average per well exceeds 5 barrels per day, the excess should be curtailed 50% so that, for example, an 80 acre lease with 8 wells thereon which is making a total of 100 barrels per day should be curtailed and prorated so that it would receive an exemption of 40 barrels and the remaining 60 barrels of potential should be cut to 30 barrels, so that the total allowable production from such lease would be 70 barrels per day. In this manner the Commission estimates that the production from the hitherto unprorated fields will be decreased approximately 50,000 barrels per day and to the reasonable market demand therefrom and that this curtailment will fall approximately 10,000 wells out of a total of approximately 60,000 wells hitherto not prorated, and that of said 60,000 wells, the 50,000 smallest wells will remain uncurtailed under this plan and for the reasons above stated.

The Commission finds that the full potential production from the Oklahoma City pool cannot be produced without waste, including physical waste and waste incident to the production of crude oil or petroleum in excess of the reasonable market demand, and that the reasonable market de-

mand from said pool at the present time is approximately 131,095 barrels per day, and that in the month of November said reasonable market demand from said pool will be approximately 134,589 barrels per day, and that in the month of December the reasonable market demand from said pool will be 131,003 barrels per day, and that the market demand herein named is somewhat contingent upon transference by the purchasing companies of purchasing power from the "Class A" pools herein to the Oklahoma City pool and upon ability to transfer pipeline connections, and the Commission therefore finds that the orders, rules and regulations should be made sufficiently flexible so that increases or decreases in market demand from said Oklahoma City pool and increases or decreases in potential production therefrom, can be recognized by ancillary orders of the Commission, and that for this purpose the Umpire and Operators' Committee should be instructed to compute from time to time, the rate of curtailment necessary in order to conform the permitted production to the reasonable market demand from the said Oklahoma City pool and to report the same to the Commission with the facts in support thereof as a basis for such ancillary order; it being understood, however, that whatever reasonable market demand develops for crude oil from the Oklahoma City pool shall be prorated among all the producing wells therein, so that each well will be permitted to produce its proportionate share of the amount of oil that may be produced from said field without waste.

[fol. 114] (k) The Commission finds that the potential production of the State of Oklahoma now so far exceeds the reasonable market demand from said State as a whole, and the resulting curtailment of producing wells has become so drastic and severe, that it would be inequitable and unfair and discriminatory to hereafter permit full production from wild-cat wells hereafter drilled which open new pools, sands or zones, and the Commission therefore finds that all wild-cat wells or wells opening new pools, sands or zones completed or brought into production after the date of this order should be limited to a production of 50 barrels per well per day, after one day open flow for test, and until otherwise ordered by the Corporation Commission.

The Corporation Commission has examined many witnesses in this case, and has afforded an opportunity for

everyone interested to be heard. There has been some contention that proration of the Oklahoma oil pools is a scheme or device to limit production and to maintain the price of crude oil, but this Commission asserts that its orders have been and are now based solely upon the purpose to prevent waste of crude oil in the various oil pools of the state, and, in the process of so doing, to require ratable or proportional taking from each of the wells in a common source of supply or pool where curtailment of production from the pool as a whole is necessary to prevent waste, and that this Commission has exercised its independent judgment in prescribing the proration orders, and has not attempted to influence price of crude oil or refined products, and that if any such effect has occurred it is purely incidental and not intended. In this connection the Commission finds that from 65% to 75% of the crude oil sold from the wells in Oklahoma is sold to refiners and purchasers who take it outside of the State of Oklahoma, and which oil so sold goes into the world market for petroleum in competition with crude oil from Venezuela, Mexico, Columbia, Peru, California, New Mexico, Kansas, Texas, Louisiana, Arkansas, and other producing areas, and that the price at which it is sold is fixed, not by this Commission, but by the freeplay of competition and by the relation between supply and demand in the said world market; that the market price for said oil is evidenced by the price regularly posted and offered by the principal purchasers of oil, and that practically all of the oil that is sold in Oklahoma is sold at said regular posted market price, and that there is no evidence that proration in Oklahoma has had any affect upon said price.

The Commission further finds that proration has been in effect in various oil pools in the State of Oklahoma almost continuously from October, 1926, to the present time, and that during said period the regular posted market price for crude oil in this state has declined about 40% and has not been maintained or affected by proration in this state so far as this Commission is able to determine; that there is plenty of crude oil now available for purchase by refiners in the State of Oklahoma and the Commission has taken every precaution to make its orders so flexible that

no reasonable market demand for crude oil from any pool in the State shall be denied.

There was evidence adduced at the hearing tending to show that there is a difference of opinion among operators and experts as to whether time proration, as applied in the Oklahoma City field, or proration based upon a percentage of daily potential production, is the better method of securing proportional taking without injury to the wells. [fol. 115] This Commission has provided in its orders a degree of flexibility by which either time proration or what is known as percentage proration might be utilized in each of the pools involved upon application of any operators, or upon application of the Umpire or Operators' Committee supported by proper evidence. The operators in the Oklahoma City pool have, up to this time, unanimously recommended to this Commission that proration in that pool be applied according to the time method, and it has been for this reason that time proration has been in effect in the Oklahoma City pool. The Commission cannot find from the evidence now before it that a change from time proration to percentage proration should be ordered, nor whether a combination of the two methods might be utilized with advantage in said pool. The Commission therefore sets this particular matter for hearing before this Commission at 10 o'clock A. M. on the 5th day of November, 1930, and will give all operators in the field an opportunity to be heard on the question whether such change should be made. In the meantime, and until otherwise ordered by the Commission, time proration will be continued in the Oklahoma City field.

The Commission finds from the evidence that crude oil and natural gas occur together, or in close proximity to each other in the ground, and that there is a common gas pressure throughout a common pool which exerts an energy or force to move the gas and oil toward the point of least resistance, and that therefore when wells are drilled into a pool or structure the oil and gas become migratory, and, having the power of self transmission, will move from one property to another, underground, in such pool; and that when some of the wells in such a common pool are permitted to produce at a greater proportion of their capacity than others, drainage occurs from the less active to the more active wells, if such disproportionate condition is con-

tinued; that in the Oklahoma City pool there is a heavy gas pressure which would cause such drainage should disproportionate taking of crude oil and gas be permitted that the history of the oil producing business in this and other surrounding states shows that in the case of flush pools where proportional taking from the wells is not enforced, and where the full production from the pool cannot be taken, either because of inadequate transportation facilities or because the reasonable market demand does not equal the potential production, producers who do not have physical or market outlets will be forced to produce their well to capacity in order to prevent drainage of the oil to the wells of such producers as do have adequate physical or market outlets. In such cases, in the absence of adequate steel storage available to every producer, some of them will flow the oil into earthen pits. This has occurred many times in the oil pools in Oklahoma and surrounding states and has always cause- actual physical waste of the crude oil through evaporation, leakage, and washouts to a very large extent. The Commission finds that this would be the case in the Oklahoma City field, and in many other fields of the state if production were not curtailed as provided in this order.

The Commission further finds that to permit the wells in the Oklahoma City field to flow wide open and continuously, without limitation as to time, would cause serious underground waste.

A protest has been filed by the producers and refiners in Stephens County against the application of this order to the wells in said county, and some evidence has been introduced tending to show that at least some of the wells in the pools in said county produce such large quantities of salt water that they might be injured by enforcement of the degree of curtailment provided for in the case of the "Class [fol. 116] A" pools. The Commission is unable to determine from the evidence now before it whether any or all of the pools and leases in Stephens County should be exempted from proration on account of possible injury to the wells, or on account of the state of the market demands in said county, and for these reasons the Commission will hold this order in abeyance as to the oil pools in Stephens County until a more particular examination of the wells

and leases, and of the reasonable market demand for crude oil from said pools can be made under the supervision of this Commission; and, to that end, the Umpire and the Chief Oil & Gas Conservation Officer, and the Operator's Committee, are hereby directed to make an immediate and detailed examination of the producing and operating conditions in said pools, and with respect to the market demand from the pools in said county, and to report the same to this Commission on or before 10 o'clock A. M., November 7th, 1930, at which time this Commission will hear the reports of the said Umpire, Agents and Operator's Committee, and any interested person with reference to the application of the order to said Stephens County pools, any modification thereof that should be made, or any exemption that should be granted.

The Corporation Commission further finds that the allegations of the supplemental petition filed herein are true and correct, and that accordingly these conditions of waste now exist in said pools, and commission of waste is imminent, and the same should be prohibited and prevented, and the following rules and regulations are necessary, reasonable and appropriate for that purpose.

It is therefore ordered by the Corporation Commission of the State of Oklahoma, as follows:

1

The areas to be subjected to the rules and regulations of the Corporation Commission are all of the oil pools in the State of Oklahoma, and such new pools, sands or zones as may come into production during October, November and December, 1930.

2

Ray M. Collins is hereby appointed as Umpire and Agent of the Commission to enforce the rules and regulations herein made and he is hereby authorized to employ as many assistants as he shall deem necessary.

3

Where percentage proration is applied a gauge of producing wells shall be taken in the following manner: the gauge to determine potential shall be taken by each opera-

tor in the pool in respect of the lease or leases owned by him therein and then producing, such gauge to be taken between the hours of seven A. M. on the day set by the Order of the Commission, and seven A. M. on the following day. Prior to the taking of such gauge and in respect of each producing lease covered hereby the Umpire shall appoint a representative of an operator owning a lease adjoining the particular property to be gauged, and shall notify the operator whose property is to be gauged of the name of the representative, such notification to be given prior to the taking of such gauge. It shall be the positive [fol. 117] duty of such representative to remain on the lease that is being gauged throughout the entire day that the gauge is being taken to witness the gauging of the production therefrom; and immediately upon the completion of such gauge, such witness and the operator whose property was gauged shall file a written statement with the Umpire showing the production of said lease, and of each well thereon for the day said gauge is taken. The production so shown shall constitute the potential for said lease until the next gauge is taken. During the time this Order is in force a similar gauge of each property shall be taken from time to time as the Umpire and Operators' Committee may designate but not less than one each month, except that in the entire Greater Seminole area, aside from South Earlsboro, East Earlsboro, East Little River, Sasakwa, Konawa, West Asher-Wanette, Earlsboro Townsite and Wilcox wells in Allen pools, and in the "Class A" pools, the gauge may, upon direction of the Umpire, be determined by applying the proper decline curve for each lease so gauged.

Oklahoma oil production shall be limited to an average of approximately 550,000 barrels per day during October 1930; 545,000 barrels per day during November 1930, and 535,000 barrels per day during December 1930; said figures represent the estimated demand during said period and same shall be used as the basis for the limitation of production in this State until the Corporation Commission shall find from evidence that the same should be changed.

Each person, firm or corporation having the right to drill into and produce oil from any of the flush or semi-flush pools or areas and extensions thereof that are covered by this Order may take from such pool or area and extension

thereof only such proportion of all crude oil and petroleum that may be produced therefrom under this Order as the production of the well or wells of such person, firm or corporation in said pool or area bears to the total potential production of such pool or area. In the case of each such pool or area the Umpire and the Operators' Committee for said pool or area shall recommend whether the production shall be curtailed on a time basis or on the casis of a percentage of potential daily production but such decision shall be reported by the Umpire to this Commission for approval and in no event shall any pool and its extensions be permitted to produce more than its allowable output as fixed by this Order.

The Commission may, by ancillary order, temporarily reduce the allowable percentage of production for any pool upon the recommendation of the Umpire and Operators' Committee that it is necessary to do so in order to allow producers who may be underproduced to catch up with their respective quotas.

5

Where shortage and overages have occurred under previous orders of this Commission, the same shall be carried forward and adjusted during the month of October. Any lease showing an overage of one barrel or more at November 1st, or at the first day of any month thereafter during the life of this Order shall be immediately reported by the Umpire under oath to the Corporation Commission as a basis for citation and such report shall contain in addition to the location of the property and the amount of the overage, the names and addresses of the lessee, the purchaser of the oil and the transporter. Leases which are being gauged according to a decline curve and showing a shortage at the end of any month of more than two days allowed production shall take as their potential for the following month the daily average production of the last ten days of the month. And in the case of such leases, shortages of two days' allowable production or less shall be credited on the next month's allowed production.

[fol. 118] 6

To establish equality between producing wells and drilling wells, each well now drilling in any of said areas, or

which may be commenced in said areas or in any new areas prior to December 31, 1930, shall take a delay prior to being brought into production, equal to the accumulated shut-in time and accumulated equivalent time resulting from pinching or producing wells from the beginning of the proration period in each pool, said period of delay to be computed in each instance after allowing seven (7) days for the cement to set: Provided the maximum shut-in time in each of said pools shall be according to the following schedule:

Area	No. of days cement to set	No. of days of open flow for test	Days Shutdown	Total
Oklahoma City	7	1	57	65
East Earlboro	7	1	41	49
Konawa	7	1	16	24
West Asher-Wanette	7	1	16	24
Marshall-Lovell	7	1	16	24
South Earlsboro	7	1	16	24
Seminole, et al.	7	1	16	24

Previous orders of the Corporation Commission as to wells now completed but not on production shall be continued in effect as to the shutdown requirements therein. Wildcat wells hereafter completed and opening new pools, sands, or zones shall have one day of open flow for test and thereafter the production therefrom, together with that from subsequently completed wells therein, shall be pinched in to 50 barrels per well per day until further order of the Corporation Commission. A wildcat well shall be considered as one outside of a pre-existing drainage area.

7

That all purchasers and pipeline carriers of oil in the State of Oklahoma be and they are hereby forbidden to aid or abet producers in violating this Order by purchasing or carrying oil produced in violation of these orders of the Commission.

8

Attention of the producers in each pool is hereby directed to Section 7959, Compiled Oklahoma Statutes, which provides that any person, firm or corporation may institute proceedings before the Corporation Commission or apply

for a hearing upon any question relating to the enforcement of the conservation laws. In this connection, producers in each of the pools in Oklahoma are invited to appear before the Commission at any time that they may deem themselves peculiarly injured by the administration of this order in any particular or in any manner discriminated against, and the Commission will hear and act upon the evidence disclosed in such hearing. Notice should be given to the Umpire and Operators' Committee of the intention to thus appear before the Commission on any such question.

9

Class A Pools: All oil pools in the State not heretofore prorated under the order of the Corporation Commission No. 5189, 5246 and 5292 shall be designated as "Class A" pools. All leases in said pools which have a potential production in excess of an average of 5 barrels per well per day shall be curtailed 50% of the excess over such 5 barrels per well per day average. In all leases in said pools [fol. 119] an exemption from proration of an average of 5 barrels per well per day shall be allowed. The following is an illustration of what is intended by this regulation, to-wit: an 80-acre lease with 8 wells thereon which is making a total of 100 barrels per day will be allowed an exemption of 40 barrels and the remaining 60 barrels will be cut to 30 barrels so that the total allowable production from the lease as a whole will be 70 barrels. The pipelines and purchasing companies are hereby directed to observe and enforce this regulation in said "Class A" pools and to assist the Umpire and Operators' Committee in carrying out the requirements hereof.

10

Class B Pools: The following semi-flush pools shall be placed in "Class B", to-wit: Allen (Wilcox), Allen (Cromwell), Bowlogs, Earlsboro (proper), Earlsboro Townsite, Little River, East Little River, Marshall-Lovell, Maud, Mission, Sasakwa, Searight, Seminole, East Seminole and St. Louis.

These pools shall be curtailed in the following manner: Allowed production, 50% of potential production with

this qualification—that in the case of any lease not capable of making in excess of 50 barrels per day, it shall be allowed an exemption of 5 barrels per well per day and the curtailment of 50% shall only be applied to the excess over an average per well of 5 barrels per day.

11

Class C Pools: The following pools shall be placed in "Class C", to-wit: Carr City pool with its new extension and South Earlsboro pool. These pools, to recognize the market outlet and to conform to the peculiar conditions therein shall be curtailed according to the following schedule:

Average barrels per well per lease:

300 barrels or more—allowed production	25%		
200 to 300 barrels— " "	30%	not over 75 bb.	
100 to 200 barrels— " "	37½%	" " 60 "	
Less than 100 bbls. " "	50%		

Also, in these pools where a lease is not capable of making more than 50 barrels per day, there shall be allowed an exemption of 5 barrels per well per day as in "Class B".

12

Class D Pools: Konawa Pool. There being no other pool in the State similar position to that of Konawa, it is placed in a class by itself and shall be prorated on the following schedule:

Average barrels per well per lease:

400 bbls. or more—allowed production	18¾%		
300 to 400 bbls— " "	22½%	not over 75 bbls.	
200 to 300 " — " "	26¼%	" " 67 "	
100 to 200 " — " "	37½%	" " 53 "	
Less than 100 bbls.			

[fol. 120] Also, in this pool, leases not capable of making over 50 barrels per day shall be granted on exemption of 5 barrels per well per day as in "Class B".

—

Class E Pools: East Earlsboro and West Asher-Wanette. Owing to the changing relation between the potential production and the market outlet from these pools, it is or-

dered that each of them be limited in production to a stated figure representing the present market outlet which, in the case of the East Earlsboro pool, is 15,000 barrels per day; and in the case of the West Asher-Wanette pool is 7,200 barrels per day. And that the Umpire and Operators' Committee be required to ascertain and compute from time to time the percentage of potentual production which may be allowed to conform the permitted production to the market outlet and to report the same to the Corporation Commission as the basis for an ancillary order. But in these pools the 5 barrel per well exemption in leases not capable of makin- in excess of 50 barrels per day shall apply as in "Class B".

14

Class F Pools: Tatums and Chandler Pools. Both of these pools have new extension with potentially large wells along with old, small wells. Having in view the present market outlet from these pools, it is ordered that they be curtailed in the following manner:

Wells with a potential daily production of 400 barrels or more shall be allowed 100 barrels daily. Wells with a daily potential of from 100 barrels to 400 barrels shall be allowed 50 barrels per day. Wells with a daily potential production of less than 100 barrels shall be allowed an exemption of 5 barrels per day and be curtailed 50% of the excess over 5 barrels.

Provided: That the Umpire and Operators' Committee shall, from time to time, make a survey of the market outlet from each of said pools and in case the market demand increases, this fact, together with suggested changes in the percentage of allowable production, shall be reported to the Commission as the basis for an ancillary order.

15

Class G Pools: West Perry, Orlando and Township 20 North, Range 4 West. These new pools unascertained possibilities are now being curtailed on the basis of the following maximum allowed output which shall be continued until otherwise ordered by the Commission, to-wit:

West Perry	600	barrels	daily
Orlando	400	"	"
Twp. 20 R. 4 W.	400	"	"

16

Class H Pools: The Oklahoma City pool. The Corporation Commission allocates to the Oklahoma City pool an outlet of 131,095 barrels per day in October, 134,589 barrels per day in November and 131,003 barrels per day in December. This nomination of the total permitted production of the pool shall serve as a basis for fixing the proportional production of the wells in said pool until the [fol. 121] Commission finds from evidence that a greater or less reasonable market demand obtains. The Umpire and Operators' Committee are directed to compute the percentage of proration from time to time as found necessary to conform the permitted production to the reasonable market demand and to report their findings to the Commission as a basis for an ancillary order.

It is further ordered that whatever reasonable market demand from the pool shall exist at any time shall be prorated and allocated among all the producing wells, so that each well shall receive its prorata share of the reasonable market demand, and the pipeline companies are hereby directed to cooperate with the Umpire in so arranging pipe line connections that there shall be no discrimination in favor of one producer and against another.

17

The Commission will, in separate order, name for the various pools embraced within the terms and provisions of this Order, Operators' Committees for each of said respective pools and territories embraced herein. This will be necessary for the reason that the law required the approval of His Excellency, the Governor of the State of Oklahoma, in the appointment and designation of such officials.

Jurisdiction of this cause is hereby retained by the Corporation Commission, and notice is hereby given that supplemental and ancillary orders may be made herein from time to time as required by new developments and as instructions to the Umpire and Operators' Committee. When in the judgment of the Umpire or any Operators' Committee any adjustment or fixing of percentages of well production as provided in this order shall be proper, or as any

such supplemental or ancillary order shall become necessary the facts supporting the necessity therefor and the reasonableness thereof shall be reported to the Commission for approval, and no exception to these rules and regulations shall be allowed by the Umpire or Operators' Committee, nor shall any adjustment of percentages or well production become effective, unless approved by such an ancillary order of this Commission. Should the demand for crude oil from the State of Oklahoma increase prior to December 31, 1930, to such an extent as to permit a greater outlet from the pools herein mentioned, the Umpire shall report the facts to the Commission, together with the recommended percentages, and the Corporation Commission hereby gives notice that such revised percentages may be substituted for the percentage provided for in this order.

Done at Oklahoma City this the 28th day of October, 1930.

Corporation Commission of Oklahoma. (Signed) C. C. Childers, Chairman. (Signed) Fred Capshaw, Commissioner. (Signed) E. R. Hughes, Commissioner.

Attest: (Signed) E. D. Hicks, Jr., Secy. (Seal.)

[fol. 122] No. 5374, dated November 3, 1930, which order reads as follows:

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause No. 10326. Order No. 5374

In the Matter of the Application of Otto Bradford for the Promulgation of Supplemental Rules and Regulations to be Established by the Corporation Commission in the Prevention of the Waste of Crude Oil and Petroleum Products and for the Equalization of Ratable Taking of Crude Petroleum from the Oklahoma City Oil Field, Oklahoma County, Oklahoma

FINDINGS OF FACT, OPINION AND ORDER MODIFYING AND SUPPLEMENTING ORDER No. 5369

On the 28th day of October, 1930, the Corporation Commission of the State of Oklahoma made and entered its Order No. 5369 after a lengthy hearing at which much tes-

timony was introduced with respect to the conditions under which crude oil and petroleum products are being produced in what is known as the Oklahoma City pool located adjacent to Oklahoma City, Oklahoma. By the terms and provisions of said Order No. 5369 it was found that there should be allocated to the Oklahoma City pool an outlet of 131,095 barrels per day in October, 134,589 barrels per day in November, and 131,003 barrels per day in December, and that this outlet should be used as a basis for fixing the proportional production of the various wells in said pool, until the Commission should find from evidence that a greater or less, reasonable market demand obtained. The Umpire and Operators' Committee were directed to compute the percentage of proration from time to time as found necessary to conform the permitted production to the reasonable market demand, and to report their findings to the Commission as a basis for an ancillary order. It was further found and ordered that whatever reasonable market demand from the pool should exist at any time, should be prorated and allocated among all the producing wells so that each well should receive its prorata share of the reasonable market demand, and the order directed the pipe line companies to cooperate with the Umpire in so arranging pipe line connections that there shall be no discrimination in favor of one producer as against another. Jurisdiction was expressly retained by the Commission and notice given by the terms and provisions of the order, that supplemental and ancillary orders would be made upon application from time to time as new developments might require.

On October 23rd, 1930, application was made to the Commission by Otto Bradford, field Umpire for the Oklahoma City oil field, for modification of Order No. 5369 shutting in or closing down all producing wells which are at the present time evenly produced, or which at the present time are over-produced in the Oklahoma City field until all oil in storage has been run, and the under-produced wells have been allowed to catch up with the production to which they are now or have been entitled under the various proration orders now and heretofore in effect, and that the wells now drilling be penalized for the same period of time the producing wells were shut in. The application recites that un-

der the rules heretofore adopted there are a number of wells under-produced being unable to flow their wells on account of insufficient outlet to take care of the oil as produced, and that there has accumulated throughout the Oklahoma City field approximately 3,169,796 barrels of oil in lease storage which the producers have been unable to run because of insufficient pipe line facilities.

[fol. 123] The application then recites that at a producers meeting held in the Chamber of Commerce Rooms at Oklahoma City on the 22nd day of October, 1930, a Motion was put and carried by the producers present requesting the Corporation Commission to enter an order closing down all evenly produced wells or over-produced wells until the other under-produced wells are permitted to catch up with the production to which they are now and have been entitled and until all oil in storage has been run.

The matter was set for hearing before the Commission on October 30, 1930, at which time it was heard before the Commissioners Capshaw and Hughes. Testimony was taken in support of the application on that and the following day and the case closed. Testimony supports the allegations of the petition and clearly shows that under the proration orders now and heretofore in effect on account of limited transportation facilities, lack of pipe line connections and insufficient market demands, that certain of the oil producers in the Oklahoma City field have been unable to produce and market all the oil which they have been permitted to produce and market under the proration orders heretofore in effect, and that certain other producers have not been able to produce and market all that they were entitled to produce and market, and that some modification of the present order must be made in order to equalize the situation so as to afford all a reasonable opportunity of producing and marketing that oil which he is entitled to produce and market. This of necessity will result in the cutting down the production of these wells now evenly produced, the output of which has been evenly allocated in conformity to the rules heretofore in effect. This is necessary in order that justice may be done and in order that ratable taking may be fully realized by the oil producers in the Oklahoma City pool.

Now on this the 3rd day of November, 1930, the Commission having under consideration the matters and things in-

volved in said application, together with the testimony taken at the hearing, and after having given due consideration to all parties who desire to present testimony, is of the opinion and finds:

First: That there are a number of producing oil wells in the Oklahoma City pool that have been unable to flow their wells on account of insufficient outlet to take care of the oil as produced.

Second: That there are other operators and producers that have been unable to run the oil produced under the proration orders because of insufficient pipeline facilities.

Third: That it is necessary in order to equalize the ratable taking from the Oklahoma City oil pool and to equalize the opportunity of each producer in said field to produce and market his prorated share of oil produced from said pool, that Order No. 5369 be supplemented and modified by requiring the over-produced wells and the evenly produced wells be shut in and the production curtailed until such time as the under-produced operators and wells shall have had opportunities through pipeline facilities and marketing facilities, to make up such under-production in the ratable taking from said field.

It is therefore the order of the Commission, premises considered, that Order No. 5369 made and entered on the 28th day of October, 1930, insofar as it relates to the Oklahoma City oil field, be and the same is hereby modified and supplemented as follows, to-wit:

First. That on and after the effective date of this order, all producing oil wells in the Oklahoma oil pool which have served their sixty-five days shut-in, and are at the present time evenly produced under the terms and provisions of the proration orders heretofore enforced in said field, shall be allowed to produce until otherwise ordered, for a period of 4 hours for each 12 day period until such time as the under-produced wells in said pool have had opportunity to produce and market the amount of oil which they are now and have been entitled to produce under such proration [fol. 124] orders.

Second. That all new wells hereafter brought into production shall be permitted to flow a testing period of 8 hours after being brought in and shall thereafter be closed for the 65 day shut-in period, then shall be permitted to flow for a 4 hour period for each 12 days until such time as production in the field is shown to be equalized as between all wells; provided that the 8 hour testing period shall be charged against said well and against its allowable production.

Third. That all over-produced wells shall be shut in until such time as they are shown to be evenly produced, at which time they shall then be allowed to flow a period of 4 hours for each 12 days, until such time as production in the field is shown to be equalized as between all wells.

Fourth. Wells heretofore brought into production and have not flowed the 24 hour over period heretofore allowed, shall be considered as evenly produced as of the effective date hereof, and shall be prorated upon the basis of 4 hours for each 12 day period until such time as the production from all the wells in said pool shall be equalized.

Fifth. Under produced wells in the making up of their under production, shall be permitted to produce ratably as among the under produced wells to the full extent to which marketing and transportation facilities may permit.

Sixth. Oil in storage representing under run production which any operator has heretofore been entitled to produce and market, shall be considered as oil which the producer and owner is entitled to run, transport and dispose of under the terms and provisions of this order.

Except as otherwise provided herein, Order No. 5369 to remain in full force and effect.

Done at Oklahoma City this the 3rd day of November, 1930.

Corporation Commission of Oklahoma. ——, Chairman. (Signed) Fred Capshaw, Commissioner. (Signed) E. R. Hughes, Commissioner.

Attest: E. D. Hicks, Jr., Secy. Seal.

[fol. 125] No. 5387, dated November 8, 1930, which order reads as follows:

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA.

Cause No. 10326. Order No. 5387

In the Matter of the Application of WIRT FRANKLIN for Rules and Regulations to be Established by the Commission for the Prevention of Waste of Petroleum in the Producing Oil Fields of the State of Oklahoma and in the Matter of the Application of the Stephens County Area and Southern Oklahoma Pools for an Order Exempting said Fields from the Terms and Provisions of Order No. 5369

ORDER

On the 28th day of October, 1930, the Corporation Commission made and entered its Order No. 5369 by the terms and provisions of which proration of the production of crude oil and petroleum was ordered as among producers, and ratable taking required throughout the State of Oklahoma. However, at the time of the hearing a protest was filed by certain producers and refiners in the Stephens County oil area, and by other producers located and operating in Marshall, Carter, Grady, Garvin, Jefferson, Cotton and Comanche Counties on account of the fact that a great number of the wells in this producing area are producing large quantities of salt water, which, in the opinion of the operators, might effect injuriously such wells in case the production was curtailed by the proration scheme contemplated. The Commission found in that order that it was unable to determine from the evidence before it whether the exemption should be extended to these pools, and for that reason the order as to these counties was held in abeyance until a further and more particular study and examination of the wells and leases in this territory could be made. It was ordered by the terms and provisions of that order that the Umpire and Chief Oil & Gas Conservation Officer, together with the Operators Committee, should make an immediate and detailed examination of the producing and operating conditions in said fields and report same to the Commission on or before November 7th, 1930,

as a basis for the determination of the request of said operators. Such investigation has been conducted and certain recommendations have been made by the Umpire and Operators Committee for the territory under consideration.

The Umpire and Operators Committee have concluded that certain wells producing crude oil in this area would probably be injuriously affected by the extension of the proration scheme as set forth and contained in said Order No. 5369, and is of the opinion that certain wells on account of the encroachment of water, should be exempted from the requirements of the order made and entered on October 28th, 1930. It is impossible for the Commission to consider each particular well producing oil in this area, and for that reason is of the opinion that the Umpire and Operators Committee should be permitted, upon applica-
[fol. 126] tion and showing by any given lease, to exempt such lease temporarily from the terms and provisions of said Order until the matter may be submitted to and acted upon by the Commission, but that otherwise Order No. 5369 should be extended and made enforceable as to the Stephens County area including Stephens, Marshall, Carter, Grady, Garvin, Jefferson, Cotton and Comanche Counties.

Now on this the 8 day of November, 1930, the Commission having under consideration the matters and things involved, together with the recommendation of the Umpire and Operators Committee for Southern Oklahoma, including Stephens, Marshall, Carter, Grady, Garvin, Jefferson, Cotton and Comanche Counties, is of the opinion and finds:

First. That the terms and provisions of Order No. 5369 should be extended and made applicable to what is known as the Stephens County area, and to all producing pools located in Stephens, Marshall, Carter, Grady, Garvin, Jefferson, Cotton and Comanche Counties, provided, however, that the Umpire and Operators Committee heretofore selected, designated and appointed for these counties, should be authorized, upon application of the operator of any lease and a study of the conditions existing in the operation of the wells thereon, to exempt any such lease temporarily from the rules, regulations and requirements of said Order No. 5369, prorating the production therefrom.

Second. That all such leases which may be considered subject to exemption temporarily, shall be investigated and

a study made thereof, so as to permit the Umpire and Committee to formulate a final conclusion as to whether or not they should be permanently exempt, and recommend same to the Commission, and that upon final determination by the Commission, should any of such leases temporarily exempted from the terms and provisions of such order, be found subject to proration, then and in that event such leases, and the wells thereon shall be required to make up any over production during the period of time of the temporary exemption which may have been extended by the Umpire and Operators Committee, so as to equalize the production among all producers of the pools affected.

It is therefore the order of the Commission, premises considered, that the terms and provisions of Order No. 5369 made, entered and promulgated on the 28th day of October, 1930, be and they are hereby extended and made applicable to all that district comprising Stephens, Marshall, Carter, Grady, Garvin, Jefferson, Cotton and Comanche Counties, and in the various oil pools and producing leases in such area; provided, however, that the Umpire and Operators Committee heretofore designated, selected and appointed for said area, be and they are hereby authorized upon application of the operator of any oil and gas lease in said area, and proper showing, to temporarily exempt from the terms and provisions of said Order any such lease where it is shown that the encroachment of water would injuriously affect the wells thereon, so as to prevent, rather than to aid conservation of crude oil and petroleum; that said Umpire and Committee shall investigate any such conditions, even though temporary exemption may be extended, so as to ascertain fully the facts with respect to said exemption, and report to the Commission the result thereof with its recommendation as to whether or not the lease should be permanently exempted by the Commission, and if upon final investigation any such lease temporarily exempted should be found by the Commission to be subject to proration and not [fol. 127] entitled to exemption, then and in that event any such lease shall be required to make up any over production during said exemption, over and above that to which said lease would have been entitled had no exemption been extended.

As provided in said Order No. 5369, this matter will be left open for recommendation by the Umpire and Operators

Committee for modification, as conditions may justify from time to time.

This Order to be in full force and effect from and after the 8 day of November, 1930.

Corporation Commission of Oklahoma. C. C. Childers, Chairman. Fred Capshaw, Commissioner. ——— ———, Commissioner.

Attest: E. D. Hicks, Jr., Secy.

[fol. 128] No. 5396, dated December 4, 1930, which order reads as follows:

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause No. 10326. Order No. 5396

In the Matter of the Application of WIRT FRANKLIN for Rules and Regulations to be Established by the Commission for the Prevention of Waste of Crude Oil and Petroleum in the Producing Oil Fields of the State of Oklahoma

ORDER

On the 28th day of October, 1930, the Commission made and entered its Order No. 5369 in the above styled and numbered cause, by the terms and provisions of which rules and regulations and requirements looking to the prevention of waste in the production of crude oil and petroleum products within the State of Oklahoma were established. A supplemental Order was also made and entered on the 3rd day of November, 1930, dealing with the matter of the equalization of the amount of crude oil taken from the Oklahoma City pool under previous orders of the Commission, for the purpose of allowing under produced wells to produce in such way and manner as to catch up with the equally or evenly produced wells in said field. A hearing was had by the Commission on November 24th, 1930, upon the Commission's own initiative, for the purpose of attempting to determine in the Oklahoma City oil field the matter of whether or not proration in the future should be based and conducted upon the time basis of proration, or

whether or not it should be changed, and conducted upon the percentage or potential basis.

Testimony at all of the hearing- heretofore held by the Commission had been introduced with respect to the difficulty of ascertaining the exact amount of oil produced in a given time, and the difficulty in securing an equal and fair taking as between the various producers of the pool. At each of these hearings, suggestions have been made as to the propriety of requiring verified reports at stated intervals, from the operators, in order to secure this information in a more substantial form than has heretofore been possible under the method in use. It has also been suggested at different times, without dissention or dispute, that certain operators in the Oklahoma City pool have produced their wells by the method commonly termed "stop-cocking"; that is, by using the time allotted to any given lease in the production of the wells by heads and not continuously for the period of time allotted to the lease or to the well. This method of production, it is agreed results in an unfair taking from numerous wells in the field, as compared to the taking of other wells which are operated on an even time basis—that is by opening the well and allowing it to stay open and flow continuously for the period of time during which it is entitled to flow under the time basis of proration.

The Commission after having given considerable consideration to these matters, is of the opinion and finds:

[fol. 129] First. That a supplemental Order should be promulgated requiring a written statement signed by some authorized representative of the operator, and verified under oath by such operator, containing the number of the well, as well as the location of the lease on which same is located; the amount of time which the well was under produced or over produced, as the case may be, under present and prior orders of the Commission at the beginning of the current 12 day period; the current allowable time to be credited to said well for the current 12 day period, not including any underage accumulated prior to the first day of said period; the accumulated allowable time for the current 12 day period to be arrived at by adding together the amount of the underage, if any, and the current allowable time; the amount of the accumulated allowable time

for the current 12 day period which has been charged to said well up to 7 o'clock A. M. on the preceding day; the number of times said well was open for production during such preceding 24 hour period, and the hour and minute when oil from said well first reached the oil and gas separator each time the well is opened; the number of times such well was shut in during such 24 hour period, and the hour and minute each shutting in operation was completed; the amount of time charged against said well in pursuance of this and prior orders of the Corporation Commission during such preceding 24 hour period; the amount of allowable time remaining to the credit of such well for the remainder of the current 12 day period.

Second. That in the operation of the leases and wells in the Oklahoma City oil field under the present time proration basis, and in the computation of the 4 hour period as at present allowed by supplemental Order No. 5374 entered on November 3, 1930, the 4 hour allottable should be taken continuously and should be computed from the hour and minute oil production from any of said wells first reaches the oil and gas separator, and that in case any well is entitled to an allowable time of less than 4 hours during any current 12 day period, then when such well is opened for the purpose of taking its allowable time, such time shall be computed from the hour and minute oil produced from said well first reaches the oil and gas separator, and shall be computed continuously until such time is used; that any well under produced more than 4 hours shall be entitled to make up any such underage in 4 hour periods to be computed as above provided, and if any such under produced well in making up its underage, comes to a point when its underage is less than 4 hours, then such remaining underage shall be taken continuously, provided, in the event a well which is making up under production under the terms and provisions of Order No. 5374 adopted November 3, 1930, is not able to produce continuously for a full period as above defined, solely on account of the fact that the battery of lease tankage to which such well is connected is full, then and in that event such well shall not be charged with the full period, but shall be charged with the portion thereof prior to the hour and minute on which such battery of lease tankage became full, and the fact that such well

was unable to produce for a full period solely for such reason, and the number and capacity in barrels of the battery of lease tankage to which such well is connected shall be stated in the verified statement to be filed with the Corporation Commission as hereinabove provided.

It should also be required that copies of all statements filed with the Corporation Commission in pursuance hereof, shall at the same time be filed with the Umpire at his office in Oklahoma City, Okla.

[fol. 130] It is therefore the order of the Commission, premises considered, that from and after the effective date of this order, and until otherwise ordered by the Corporation Commission, each producer of oil in the Oklahoma City Field shall file with the Corporation Commission each day, as of 7:00 o'clock A. M. of such day, a written statement duly signed and verified under oath by such producer, or the authorized representative of such producer, giving as to each well in said field operated by such producer which was opened for production at any time during the preceding 24-hour period, the following information, to-wit:

(1) The number of the well and the name and location of the lease on which same is located.

(2) The amount of time which said well was underproduced or over-produced, as the case may be, under present and prior orders of the Corporation Commission at the beginning of the current 12 day period.

(3) The current allowable time to be credited to said well for the current 12 day period, not including any underage accumulated prior to the time day of said period.

(4) The accumulated allowable time for the current 12 day period to be arrived at by adding together the amount of the underage, if any, as shown in paragraph two above, and the current allowable time as shown in paragraph three above.

(5) The amount of the accumulated allowable time for the current 12 day period as shown in paragraph four above which has been charged to said well up to 7:00 o'clock A. M. on the preceding day.

(6) The number of times said well was opened for production during such preceding 24 hour period, and the hour and minute when oil from said well first reached the oil and gas separator each time the well was opened.

(7) The number of times such well was shut in during such preceding 24 hour period, and the hour and minute each such shutting-in operation was completed.

(8) The amount of time charged against said well in pursuance of this and prior orders of the Corporation Commission during such preceding 24 hour period.

(9) The amount of allowable time remaining to the credit of such well for the remainder of the current 12 day period.

It is the further order of the Commission that in computing the 4 hour period of production allowed by supplemental Order No. 5374, entered herein on November 3, 1930, the four hours shall be taken continuously, and shall be computed from the hour and minute oil produced from said well first reached the oil and gas separator.

If any well is entitled to an allowable time or less than four hours during any current 12 day period, then when such well is opened for the purpose of taking its allowable [fol. 131] time, such allowable time shall be taken continuously, and the allowable time computed from the hour and minute oil produced from said well first reached the oil and gas separator, as above provided.

Wells under-produced more than four hours shall be entitled to make up such underage in 4 hour periods to be computed as above provided. If any such under-produced well, in making up its underage, comes to a point when its underage is less than four hours, then such remaining underage shall be taken continuously provided, in the event a well which is making up under production in pursuance of Order No. 5374, entered herein on November 3, 1930, is not able to produce continuously for a full period as above defined, solely on account of the fact that the battery of lease tankage to which such well is connected is full, then, and in that event such well shall not be charged with the full period, but shall be charged with the portion thereof prior to the hour and minute on which such battery of lease tankage became full, and the fact that such

well was able to produce for a full period solely for such reason, and the number and capacity in barrels of the battery of lease tankage to which such well is connected shall be stated in the verified statement to be filed with the Corporation Commission as herein above provided.

Copies of all statements filed with the Corporation Commission in pursuance hereof shall, at the same time, be filed with the Umpire at his office in Oklahoma City, Oklahoma.

Done at Oklahoma City this the 4th day of Dec., 1930.

Corporation Commission of Oklahoma. —— ——, Chairman. (Signed) Fred Capshaw, Commissioner, (Signed) E. R. Hughes, Commissioner.

Attest: E. D. Hicks, Jr., Secy. (Seal.)

[fol. 132] No. 5413, dated December 30, 1930, which order reads as follows:

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause No. 10326. Order No. 5413

In the Matter of the Application of Wirt Franklin for Rules and Regulations to be Established by the Commission to Prevent Waste of Petroleum in the Producing Oil Fields of the State of Oklahoma

ORDER EXTENDING AND MODIFYING ORDER No. 5369

Comes now petitioner herein and various and sundry producers of oil in the State of Oklahoma, and this matter having been set for hearing on this 29th day of December, 1930, and the Commission having heard and considered the evidence of the petitioner and sundry other persons, and the evidence of any and all persons opposing the supplemental petition herein, and the Commission having made an investigation of the facts alleged and of the conditions in the oil fields of Oklahoma, and being fully advised in the premises, finds as follows:

(a) That areas to be covered by the rules and regulations herein prayed for are all of the oil producing areas in the State of Oklahoma and those new sands or areas

which may be brought into production during the months of January, February and March, 1931.

(b) That notice by publication on all persons or classes interested in this proceeding and in the rules and regulations to be established hereby has been given, as required by law, in a newspaper of general circulation in this State, and that, in addition reasonable notice in writing has been served personally on all persons, firms and corporations known to petitioner to be interested in this proceeding and due proof of service of notice has been made and filed herein.

(c) The Corporation Commission finds from the evidence that there is an overproduction of crude oil in the State of Oklahoma attended by waste of gas and of gas pressure and that the producers of crude oil in the oil pools of Oklahoma are threatening to and will, unless restrained by the rules and regulations of the Corporation Commission, commit physical waste of crude oil, economic waste, underground waste, surface waste and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market de- [fol. 133] mands, and that the commission of such waste is so imminent in each of the areas involved in this proceeding that orders, rules and regulations of this Commission are necessary in order to prevent such waste.

The Commission further finds that there is a general over-production and importation of crude and refined petroleum in the United States, and that this fact tends to reduce the amount of crude oil that can be produced in the State of Oklahoma without waste; that the potential production of crude oil in the United States is at this time approximately 10,000,000 barrels per day, and imports of crude and refined petroleum aggregate about 300,000 barrels per day, thus creating a total possible current supply of 10,300,000 barrels per day as against an approximate daily demand for domestic use and export of 2,500,000 barrels per day. That by reason of this great over-supply and threatened waste, potential production is now being curtailed in Oklahoma and other producing regions, and unless there is a continuance of curtailment of production in the areas involved herein, there will be an increase in waste in

this State and an undue exhaustion of our oil resources. The Commission finds that this petroleum situation constitutes a grave state emergency and that the laws of the State of Oklahoma and the powers of the Corporation Commission should be availed of to remove the same.

(d) The Commission further finds from the evidence that, in addition to the excess of potential and actual production and imports over current demand, there are stocks of petroleum on hand in the United States aggregating more than 670,000,000 barrels, which stocks are excessive and beyond the needs of the petroleum industry. That by reason of the excessive supply thus indicated, the purchasers of crude oil in Oklahoma are unwilling to purchase crude oil in Oklahoma for storage purposes in any amount that would be adequate to take care of the surplus of potential production over current demand and that, therefore, there is not sufficient empty tankage available to take care of said excess and unless production in Oklahoma is curtailed, much oil would necessarily go to earthen storage where it would evaporate and escape and thus be wasted.

(e) The Commission finds from the evidence that in order to curtail the production of crude oil in Oklahoma in a manner to prevent the commission of waste and to protect the coequal rights of producers in each pool, it will be [fol. 134] necessary to enforce proportionality of taking from the wells and leases in each of the pools where the potential production thereof exceeds the reasonable market demand therefrom, and that unless such proportionality is required, injustice would be done as between producers in the same pool in that drainage would occur from the less active leases or wells to the more active leases or wells, and an undue proportion of the gas pressure would be utilized by some operators to the detriment of others and unfair discrimination would arise as between pools.

(f) The Commission further finds that the rated potential daily production of crude oil from the wells in Oklahoma during the month of January, 1931, is and will be approximately 6,252,219 barrels and that during the months of February and March, 1931, the said rated potential daily production will be 6,686,564 barrels and 7,263,077 barrels respectively, and that the daily demand for crude oil from

Oklahoma during the months of January, February and March, 1931, will range between 465,000 barrels per day in January, which the Commission estimates as the probably demand, and 506,095 bbls. per day, which is the maximum potential demand, as hereinafter explained, and that in the month of February the estimated probable demand is 469,000 bbls. per day, with a maximum potential demand of 506,550 bbls. per day, and in March the probable demand will be 470,000 bbls. per day, with a maximum potential demand of 500,010 bbls. per day. Said distinction between probable demand and maximum potential demand arises from the uncertainty of the market outlet from what is known as the "Class A" pools, as described in the Order of October 28, 1930. The Prairie Oil & Gas Co., having announced that it would withdraw as purchaser of oil on Jan. 1, 1931, if said withdrawal is carried out it would leave the demand from the "Class A" pools at 175,905 bbls. per day, approximately, but if said "Class A" pools could re-establish their market it would potentially be approximately 217,000 bbls. per day in the month of January, and this same relative difference between the demand as now appears probable and that which might possibly be established would account for the difference in the total statewide demand as above referred to. That therefore, and by reason of the facts found in this order, the potential production from each of the pools and classes of pools involved in this proceeding is so far in excess of the reasonable market demand that the full potential production cannot be produced without waste.

The Commission further finds that if no restraint were placed upon producing wells or wells now completed or upon wells hereafter drilled during the months of January, February and March 1931, the potential production of the State of Oklahoma would be much greater than that above stated, and would exceed all transportation and marketing facilities and reasonable market demands to such an extent as to force large quantities of oil into earthen storage in this State and otherwise cause waste of a character prohibited by the laws of the State of Oklahoma. In order to prevent such waste, the Commission finds that it [fol. 135] is necessary to curtail the production from the pools in this State and each of them during the said months

of January, February and March, 1931, and according to the subjoined schedules showing the classes of pools to be prorated, the potential production of each, the estimated daily production of each under proration and the resulting total production, under proration, for the said three (3) months period:

	Estimated potential	Maximum potential demand	Estimated probable demand
January:			
Class A	247,000	217,000	175,905
Oklahoma City	5,388,298	85,000	85,000
Outside	616,921	204,095	204,095
Total State	6,252,219	506,095	465,000
February:			
Class A	243,295	213,615	176,175
Oklahoma City	5,838,804	90,000	90,000
Outside	604,465	202,825	202,825
Total State	6,686,564	506,440	469,000
March:			
Class A	239,646	210,646	180,636
Oklahoma City	6,411,459	90,000	90,000
Outside	611,972	199,364	199,364
Total State	7,263,077	500,010	470,000

[fol. 136] Suggested Potential and Allowed Production of Crude Oil, State of Oklahoma Proration Schedule, January 1, 1931, to March 31, 1931

(Except Class A and Class H Pools)

	January		February		March	
	Estimated potential	Estimated production	Estimated potential	Estimated production	Estimated potential	Estimated production
Class B:						
Allen (Wilcox)	6,704	3,352	6,369	3,185	6,051	3,026
Allen (Cromwell)	16,534	8,267	16,038	8,019	15,557	7,779
Bowlegs	25,399	12,700	24,637	12,319	23,898	11,949
Earlsboro (proper)	26,239	13,120	25,452	12,726	24,688	12,344
Earlsboro (Townsite)	9,475	4,738	9,001	4,501	8,551	4,276
Little River	45,841	22,921	45,466	22,733	44,102	22,051
East Little River	21,265	10,633	20,202	10,101	19,192	9,596
Marshall-Lovell	3,658	1,829	3,548	1,774	3,442	1,721
Maud	5,316	2,658	5,157	2,579	5,002	2,501
Mission	12,664	6,332	12,284	6,142	11,915	5,958
Sasakwa	8,169	4,085	7,761	3,881	7,375	3,687
Searight	11,156	5,578	10,821	5,411	10,496	5,248
Seminole	25,816	12,908	25,042	12,521	24,291	12,146
East Seminole	3,651	1,826	3,541	1,771	3,435	1,718
St. Louis	36,294	18,147	35,705	17,853	34,634	17,317
Sub-total	258,181	129,094	251,024	125,516	242,627	121,317
Class C:						
Carr City	42,014	12,184	40,035	11,642	44,163	12,825
South Earlsboro	28,175	7,044	25,358	6,340	22,822	5,706
Sub-total	70,189	19,228	65,393	17,982	66,985	18,331
Class D:						
Konawa	67,590	12,673	65,211	12,227	61,950	11,616

Class E:						
East Earlsboro	36,466	15,000	34,643	15,000	32,911	15,000
West Asher-Wanette	53,777	7,200	58,588	7,200	61,659	7,200
West Seminole	11,373	3,000	10,236	3,000	10,236	3,000
Wewoka	40,000	4,000	40,000	4,000	60,000	4,000
Sub-total	141,616	29,200	143,467	29,200	164,806	29,200
Class F:						
Tatums	37,000	4,500	35,000	4,500	32,000	4,500
Chandler	25,600	2,500	24,320	2,500	23,104	2,500
Sub-total	62,600	7,000	59,320	7,000	55,104	7,000
Class G:						
West Perry	1,675	600	1,500	600	1,400	600
Orlando	3,671	400	3,300	400	3,000	400
Twp. 20 N-R. 4 W	1,400	400	1,250	400	1,100	400
Sub-total	6,746	1,400	6,050	1,400	5,500	1,400
Wildcat Wells	5,000	500	5,000	500	5,000	500
New Wells (outside of Okla. City) Free production for testing	3,000	3,000	5,000	5,000	5,000	5,000
Unprorated small wells in prorated areas	2,000	2,000	4,000	4,000	5,000	5,000
Total	616,921	204,095	604,465	202,825	611,972	199,364

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165

[fol. 137] (g) The Commission finds that the order numbered 5369 and the rules and regulations adopted October 28, 1930, should be continued in force for the first quarter of 1931 as modified by this order and by such supplemental or ancillary orders as may be made by the Commission from time to time. In this connection, the Commission finds that it is characteristic of the oil producing business that the reasonable market demand and the potential production of oil pools sometimes change abruptly and frequently and it is therefore necessary that the order, rules and regulations be made sufficiently flexible to permit prompt readjustments of allowable percentages of production in order to conform the permitted production to the reasonable market demand. For these reasons the Commission would request everyone interested and instruct the umpire and operators' committees to promptly advise this commission of such changes in order that proper ancillary or supplemental orders may be made. The purpose of the Commission is to recognize fully the reasonable market demand for each pool and not to curtail production below such demand where the transportation or marketing facilities are adequate but to allocate such market demand ratably among the producing leases therein in proportion to the potential production of each lease to the end that the coequal rights of the producers may be protected and the waste incident to the production of oil in excess of the transportation or marketing facilities or the reasonable market demand may be prevented.

(h) The Commission finds from the evidence that the curtailment and the varying percentages as between pools prescribed in the schedules contained in paragraph (f) herein are necessary and reasonable in order to reduce production in this State to the reasonable market demand and in a manner least injurious to the producers and royalty owners as a whole, and in order to prevent unfair and unreasonable discrimination in favor of any one pool or common source of supply as against another.

The Commission finds that the varying percentages of curtailment as between pools as set forth in paragraph (f) of this order are necessary, fair and reasonable because of the peculiar conditions in each case and in this, to-wit: that said pools are not all served in common by the same

pipelines and purchasers; that the reasonable market demand from certain of them is greater in proportion to potential production than in the case of others; that some of them are older than others and have been prorated longer than others, under orders of the Corporation Commission with a consequent greater reduction in potential flow and smaller possible production per well per day and are, therefore, accorded a higher percentage allowable production; that in many cases individual pools are served by local [fol. 138] purchasers whose facilities cannot be extended to the others, and in certain of the pools the sand and water conditions prevent as great curtailment as is possible in others, and that in certain pools there is a more intensive drilling campaign and wells of larger capacity than in others. The Commission also finds that in the making of said schedule in paragraph (f) the producers and purchasers in all of said pools were consulted and meetings of said producers and purchasers were held at which all of the foregoing factors were considered and that said schedule represents the consensus of opinion of said producers and purchasers as to reasonableness of arrangement, necessity and convenience of producers and purchasers and equity as between the various common sources of supply under present circumstances.

The Commission finds that the basis of classification of pools for the application of the varying percentages of curtailment as shown by the schedule in paragraph (f) herein is the existing relation between the potential production of each pool and the amount of crude oil which can be produced from said pool without waste. That because said relation is not the same in all the pools involved, the percentages of curtailment must necessarily vary as between pools. A uniform percentage applied to all pools would result in the permitted production from some of them being less than the reasonable market demand therefrom, while in others the permitted production resulting from such uniform percentage would exceed the amount which could be produced therefrom without waste.

(i) The Corporation Commission further finds that in addition to the prevention of waste of crude oil, the establishment of the curtailment plan in this order set forth

will tend to conserve natural gas and gas pressure in the pools to which it shall be applied.

(j) The Commission further finds from the evidence that the best manner of applying curtailment of said "Class A" pools, is as follows, to-wit: That in each of said "Class A" pools all leases therein where the per well average per day is ten barrels or less should be exempted from curtailment or proration because to curtail or prorate said ten barrel well or wells making less than ten barrels would be to reduce the output therefrom in many cases below the point of practical operation and thus compel their abandonment which would constitute a waste of an irreplaceable natural resource, and for the further reason that many of such wells produce water along with the oil and it is necessary to pump them each day in order to prevent their injury by water encroachment. That in each of said "Class A" pools each lease should receive said exemption up to an average of ten barrels per well per day but in the case of those leases where the average per well exceeds ten bar- [fol. 139] rels per day, the excess should be curtailed 50% so that, for example, an 80 acre lease with 8 wells thereon which is making a total of 100 barrels per day should be curtailed and prorated so that it would receive an exemption of 80 barrels and the remaining 20 barrels of potential should be cut to 10 barrels, so that the total allowable production from such lease would be 90 barrels per day. In this manner the Commission estimates that the production from the "Class A" pools will be curtailed to the reasonable market demand therefrom.

(k) The Commission finds that the full potential production from the Oklahoma City pool cannot be produced without waste, including physical waste and waste incident to the production of crude oil or petroleum in excess of the reasonable market demand, and that the reasonable market demand from said pool at the present time, and during January, 1931, is and will be approximately 85,000 barrels per day, and that in the month of February, 1931, said reasonable market demand from said pool will be approximately 90,000 barrels per day, and that in the month of March, 1931, the reasonable market demand from said pool will be 90,000 barrels per day, and that the market demand herein

named is subject to increase and the Commission therefore finds that the orders, rules and regulations should be made sufficiently flexible so that increases or decreases in market demand from said Oklahoma City pool and increases or decreases in potential production therefrom, can be recognized by ancillary orders of the Commission, and that for this purpose the Umpire and Operators' Committee should be instructed to compute from time to time, the rate of curtailment necessary in order to conform the permitted production to the reasonable market demand from the said Oklahoma City pool and to report the same to the Commission with the facts in support thereof as a basis for such ancillary orders; it being understood, however, that whatever reasonable market demand develops for crude oil from the Oklahoma City pool shall be prorated among all the producing wells, therein, so that each well or lease will be permitted to produce its proportionate share of the amount of oil that may be produced from said field without waste.

The Commission further finds that if an increased reasonable market demand should be asserted the permitted production from the Oklahoma City pool could be increased in a substantial and corresponding amount without discrimination against other pools.

The Commission finds from the evidence that crude oil and natural gas occur together, or in close proximity to each other in the ground, and that there is a common gas pressure throughout a common pool which exerts an energy or [fol. 140] force to move the gas and oil toward the point of least resistance, and that therefore when wells are drilled into a pool or structure the oil and gas become migratory, and, having the power of self transmission, will move from one property to another, underground, in such pool; and that when some of the wells in such a common pool are permitted to produce at a greater proportion of their capacity than others, drainage occurs from the less active to the more active wells, if such disproportionate condition is continued; that in the Oklahoma City pool there is a heavy gas pressure which would cause such drainage should disproportionate taking of crude oil and gas be permitted; that the history of the oil producing business in this and other surrounding states shows that in the case of flush pools where proportional taking from the wells is not enforced, and where the full production from the pool cannot

be taken, either because of inadequate transportation facilities or because the reasonable market demand does not equal the potential production, producers who do not have physical or market outlets will be forced to produce their well to capacity in order to prevent drainage of the oil to the wells of such producers as do have adequate physical or market outlets. In such cases, in the absence of adequate steel storage available to every producer, some of them will flow the oil into earthen pits. This has occurred many times in the oil pools in Oklahoma and surrounding states and has always caused actual physical waste of the crude oil through evaporation, leakage, and washouts to a very large extent. The Commission finds that this would be the case in the Oklahoma City field, and in many other fields of the state if production were not curtailed as provided in this order.

The Commission further finds that to permit the wells in the Oklahoma City field to flow wide open and continuously, or disproportionately and without limitation as to time, would cause serious underground waste.

The Oklahoma City operators have petitioned this Commission for permission to change the method of proration in said pool from the time basis to the basis of percentage of daily potential production and this Commission's rules and regulations with reference thereto are embodied in a separate supplemental order this day issued. Proration of the Oklahoma City pool has heretofore been on the time basis because the operators requested it and because there was no practicable way of taking accurate gauges as a basis for proration by the percentage of potential method, there being no facilities for handling the oil that would be produced while the gauge was being taken. But the Commission now finds that a reasonably accurate gauge of potential production may now be taken and that under the circumstances as they now exist percentage proration would be better for the field in regard to reducing the possibility of waste and more equitable as —

[fol. 141] (1) The Commission finds that the potential production of the State of Oklahoma now so far exceeds the reasonable market demand from said State as a whole, and the resulting curtailment of producing wells has become so drastic and severe, that it would be inequitable and unfair and discriminatory to hereafter permit full produc-

tion from wild-cat wells hereafter drilled which open new pools, sands or zones, and the Commission therefore finds that all wild-cat wells or wells opening new pools, sands or zones completed or brought into production after the date of this order should be limited to a production of 50 barrels per well per day, after one day open flow for test, and until otherwise ordered by the Corporation Commission.

The Corporation Commission further finds that the allegations of the supplemental petition filed herein are true and correct, and that accordingly these conditions of waste now exist in said pools, and commission of waste is imminent, and the same should be prohibited and prevented, and the following rules and regulations are necessary, reasonable and appropriate for that purpose.

It is therefore ordered by the Corporation Commission of the State of Oklahoma as follows:

1

The areas to be subjected to the rules and regulations of the Corporation Commission are all of the oil pools in the State of Oklahoma, and such new pools, sands or zones as may come into production during January, February and March, 1931.

2

Ray M. Collins is hereby appointed as Umpire and Agent of the Commission to enforce the rules and regulations herein made and he is hereby authorized to employ as many assistants as he shall deem necessary.

3

Where percentage proration is applied a gauge of producing wells shall be taken in the following manner: the gauge to determine potential shall be taken by each operator in the pool in respect of the lease or leases owned by him therein and then producing, such gauge to be taken between the hours of seven A. M. on the day set by the Order of the Commission, and seven A. M. on the following day. Prior to the taking of such gauge and in respect of each producing lease covered hereby the Umpire shall appoint a representative of an operator owning a lease adjoining the particular property to be gauged, and shall notify the operator whose property is to be gauged of the name of

the representative, such notification to be given prior to the taking of such gauge. It shall be the positive duty of such representative to remain on the lease that is being gauged throughout the entire day that the gauge is being taken to witness the gauging of the production thereform; and immediately upon the completion of such gauge, such witness and the operator whose property was gauged shall file a written statement with the Umpire showing the production of said lease, and of each well thereon for the day said gauge is taken. The production so shown shall constitute the potential for said lease until the next gauge is taken. During the time this Order is in force a similar gauge of each property shall be taken from time to time as the Umpire and Operators' Committee may designate but not less than once each month. Such open gauges shall be taken in the following pools: Wewoka (Section 30 and Townsite), East Earlsboro, South Earlsboro, Section 29-9-6 (West Seminole), the flush wells in the Carr City pool located in Sections 2 and 3, Twp. 8, Range 5, and the flush wells in the Tatums pool.

On the basis of open gauges heretofore taken in East Little River, Konawa, West Asher-Wanette, Earlsboro Townsite and Sasakwa, the potential production shall be [fol. 142] declined 5% per month until further order of the Commission. On the basis of gauges already taken of the Wilcox sand wells of the Allen Pool, the potential shall be declined 3% each month, with the exception of the Sinclair-Cully 'A' Lease, Blackwell-Fleet lease and the Texas-Lewis lease, which shall be declined 5% per month, and the Texas-Dinah lease, which shall be declined 10% per month; all other wells in the pools of the Greater Seminole Area shall be declined 3% a month.

4

Each person, firm or corporation having the right to drill into and produce oil from any of the flush or semi-flush pools or areas and extensions thereof that are covered by this Order may take from such pool or area and extension thereof only such proportion of all crude oil and petroleum that may be produced therefrom under this Order as the production of the well or wells of such person, firm or corporation in said pool or area bears to the total potential production of such pool or area. In the case of each

such pool or area the Umpire and the Operators' Committee for said pool or area shall report from time to time any changes in potential production or reasonable market demand so that this Commission may change the percentage allowable to equal the reasonable market demands.

5

Where shortages and overages have occurred under previous orders of this Commission, the same shall be carried forward and adjusted during the month of January, 1931. Any lease showing an overage of one barrel or more at February 1, 1931, or at the first day of any month thereafter during the life of this Order shall be immediately reported by the Umpire under oath to the Corporation Commission as a basis for citation and such report shall contain in addition to the location of the property and the amount of the overage, the names and addresses of the lessee, the purchaser of the oil and the transporter. Leases which are being gauged according to a decline curve and showing a shortage at the end of any month of more than two days allowed production shall take as their potential for the following month the daily average production of the last ten days of the month. And in the case of such leases, shortages of two days allowable production or less shall be credited on the next month's allowed production.

6

To establish equality between producing wells and drilling wells, each well now drilling in any of said areas, or which may be commenced in said areas or in any new areas prior to March 31, 1931, shall take a delay prior to being brought into production, equal to the accumulated shut-in time and accumulated equivalent time resulting from pinching or producing wells from the beginning of the proration period in each pool, said period of delay to be computed in each instance after allowing seven (7) days for the cement to set: Provided the maximum shut-in time in each of said pools shall be according to the following schedule:

Area	No. of days allowed to set	No. of days of open flow for test	Days Shut down
Oklahoma City	7	8 hours	57
East Earlsboro	7	1 day	41
Konawa	7	1 day	16
West Asher-Wanette	7	1 day	16
Marshall-Lovell	7	1 day	16
South Earlsboro	7	1 day	16
Seminole et al.	7	1 day	16

Previous orders of the Corporation Commission as to wells now completed but not on production shall be continued in effect as to the shutdown requirements therein. Wildcat wells hereafter completed and opening new pools, sands, or zones shall have one day of open flow for test and thereafter the production therefrom, together with that from subsequently completed wells therein, shall be pinched in to 50 barrels per well per day until further order of the Corporation Commission. A wildcat well shall be considered as one outside of a pre-existing drainage area.

7

That all purchasers and pipeline carriers of oil in the State of Oklahoma be and they are hereby forbidden to aid or abet producers in violating this Order.

[fol. 143]

8

Attention of the producers in each pool is hereby directed to Section 7959, Compiled Oklahoma Statutes, which provides that any person, firm or corporation may institute proceedings before the Corporation Commission or apply for a hearing upon any question relating to the enforcement of the conservation laws. In this connection, producers in each of the pools in Oklahoma are invited to appear before the Commission at any time that they may deem themselves peculiarly injured by the administration of this order in any particular or in any manner discriminated against, and the Commission will hear and act upon the evidence disclosed in such hearing. Notice should be given to the Umpire and Operators' Committee of the intention to thus appear before the Commission on any such question.

9

Class A Pools: All oil pools in the State designated as "Class A" pools shall be prorated in the following manner: All leases in said pools which have a potential production in excess of an average of 10 barrels per well per day shall be curtailed 50% of the excess over such 10 barrels per well per day average. In all leases in said pools an exemption from proration of an average up to 10 barrels per well per day shall be allowed. The following is an illustration of what is intended by this regulation, to-wit: An 80-acre lease with 8 wells thereon which is making a total of 100 barrels per day will be allowed an exemption of 80 barrels and the remaining 20 barrels will be cut to 10 barrels so that the total allowable production from the lease as a whole will be 90 barrels. The pipelines and purchasing companies are hereby directed to observe and enforce this regulation in said "Class A" pools and to assist the Umpire and Operators' Committee in carrying out the requirements hereof.

10

Class B Pools: The following semi-flush pools shall be placed in "Class B" to-wit: Allen (Wilcox), Allen (Cromwell), Bowlegs, Earlsboro (proper), Earlsboro Townsite, Little River, East Little River, Marshall-Lovell, Maud, Mission, Sasakwa, Searight, Seminole, East Seminole and St. Louis.

These pools shall be curtailed in the following manner:

Allowed production, 50% of potential production with this qualification: that in the case of any lease not capable of making in excess of 50 barrels per day, it shall be allowed an exemption of 10 barrels per well per day and the curtailment of 50% shall only be applied to the excess over an average per well of 10 barrels per day.

11

Class C Pools: The following pools shall be placed in "Class C", to-wit: Carr City pool with its new extension and South Earlsboro pool. These pools, to recognize the market outlet and to conform to the peculiar conditions therein shall be curtailed according to the following schedule:

Average Barrels per Well per Lease

300 barrels or more—allowed production	.....	25 %	
200 to 300 barrels— " "	.....	30 %	not over 75 Bbls.
100 to 200 " — " "	.....	37½%	" " 60 "
Less than 100 bbls.— " "	.....	50 %	

Also, in these pools where a lease is not capable of making more than 50 barrels per day, there shall be allowed an exemption of 10 barrels per well per day as in "Class B".

12

Class D Pools: Konawa Pool. There being no other pool in the State in similar position to that of Konawa, it is placed in a class by itself and shall be prorated on the following schedule:

Average Barrels per Well per Lease

400 barrels or more—allowed production	.....	18¾%	
300 to 400 barrels— " "	.....	22½%	not over 75 Bbls.
200 to 300 " — " "	.....	26¼%	" " 67 "
100 to 200 " — " "	.....	37½%	" " 53 "
Less than 100 bbls.— " "	.....	50 %	

[fol. 144] Also, in this pool, leases not capable of making over 50 barrels per day shall be granted an exemption of 10 barrels per well per day as in "Class B".

13

Class E Pools: East Earlsboro, West Asher-Wanette, West Seminole (29-9-6), and Wewoka (Section 30 and Townsite). Owing to the changing relation between the potential production and the market outlet from these pools, it is ordered that each of them be limited in production to a stated figure representing the present market outlet which, in the case of the East Earlsboro pool, is 15,000 barrels per day, and in the case of the West Asher-Wanette pool is 7,200 barrels per day, and in the case of the West Seminole (20-9-6) pool is 3,000 barrels per day, and in the case of the Wewoka (Section 30 and Townsite) pool is 4,000 barrels per day. And that the Umpire and Operators' Committee be required to ascertain and compute from time to time the percentage of potential production which may be allowed to conform the permitted production to the market outlet and to report the same to

the Corporation Commission as the basis for an ancillary order. But in these pools the 10 barrel per well exemption in leases not capable of making in excess of 50 barrels per day shall apply as in "Class B".

14

Class F Pools: Tatums and Chandler Pools. Both of these pools have new extensions with potentially large wells along with old, small wells. Having in view the present market outlet from these pools, it is ordered that they be curtailed in the following manner:

Wells with a potential daily production of 400 barrels or more shall be allowed 100 barrels daily. Wells with a daily potential of from 100 barrels to 400 barrels shall be allowed 50 barrels per day. Wells with a daily potential production of less than 100 barrels shall be allowed an exemption of 10 barrels per day and be curtailed 50% of the excess over 10 barrels.

Provided: That the Umpire and Operators' Committee shall, from time to time, make a survey of the market outlet from each of said pools and in case the market demand increases, this fact, together with suggested changes in the percentage of allowable production, shall be reported to the Commission as the basis for an ancillary order.

15

Class G Pools: West Perry, Orlando and Township 20 North, Range 4 West: These new pools of unascertained possibilities are now being curtailed on the basis of the following maximum allowed output which shall be continued until otherwise ordered by the Commission, to-wit:

West Perry	600	barrels daily
Orlando	400	" "
Twp. 20 R. 4W	400	" "

16

Class H Pools: The Oklahoma City pool. The Corporation Commission temporarily nominates for the Oklahoma City pool an outlet of 85,000 barrels per day in January, 1931; 90,000 barrels per day in February and 90,000 barrels per day in March. This nomination of the total per-

mitted production of the pool shall serve as a basis for fixing the proportional production of the wells in said pool until the Commission finds from evidence that a greater or less reasonable market demand obtains. On the basis of the potential production of the field now reported to the Commission of 5,388,298 barrels per day, the temporary nominated outlet of 85,000 barrels per day will require a proportional taking of 1 1/2% from the potential production of each well or lease. This percentage shall be put in effect at 7 A. M. January 3, 1931, but the Umpire and Operators' Committee are directed to immediately begin the taking of gauges in said field according to the supplemental order this day issued and to compute the percentage of allowable from time to time as found necessary to conform the permitted production to the reasonable market demand, and to report as soon as possible their findings to the Commission as a basis for an ancillary order revising such permitted percentage. Any person interested in said pool may also report to the Commission any evidence of the need for a changed percentage. All orders heretofore issued applicable to the Oklahoma City pool, and now in force and effect, are hereby extended in full force and [fol. 145] effect until 7:00 A. M. January 3, 1931. From and after said date and hour the percentage of allowable production herein fixed for the Oklahoma City pool shall be applied according to and as modified by Order No. 5413 this day issued which applies to the Oklahoma City pool alone.

It is further ordered that whatever reasonable market demand from the pool shall exist at any time shall be prorated and allocated among all the producing wells and leases, so that each well or lease shall receive its prorata share of the reasonable market demand, and the pipeline companies are hereby directed to cooperate with the Umpire in so arranging pipeline connections that there shall be no discrimination in favor of one producer and against another.

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The Commission will, in separate order, name for the various pools embraced within the terms and provisions of this Order, Operators' Committees for each of said respective pools and territories embraced herein. This will be

necessary for the reason that the law requires the approval of His Excellency, the Governor of the State of Oklahoma, in the appointment and designation of such officials.

The Order # 5369 of October 28, 1930, shall be continued in force for the period January 1, 1931, to and including March 31, 1931, except as modified by this and other supplemental and ancillary orders of the Commission. Jurisdiction of this cause is hereby retained by the Corporation Commission, and notice is hereby given that supplemental and ancillary orders may be made herein from time to time as required by new developments and as instructions to the Umpire and Operators' Committee. When in the judgment of the Umpire or any Operators' Committee any adjustment or fixing of percentages of well production as provided in this order shall be proper, or as any such supplemental or ancillary order shall become necessary, the facts supporting the necessity therefor and the reasonableness thereof shall be reported to the Commission for approval, and no exception to those rules and regulations shall be allowed by the Umpire or Operators' Committee, nor shall any adjustment of percentages or well production become effective, unless approved by such an ancillary order of this Commission. Should the demand for crude oil from the State of Oklahoma increase prior to March 31, 1931, to such an extent as to permit a greater outlet from the pools herein mentioned, the Umpire shall report the facts to the Commission, together with the recommended percentages, and the Corporation Commission hereby gives notice that such revised percentages may be substituted for the percentages provided for in this order.

Done at Oklahoma City this the 30 day of December, 1930.

Corporation Commission of Oklahoma. ——, Chairman. Fred Capshaw, Commissioner. E. R. Hughes, Commissioner.

Attest: E. D. Hicks, Jr., Secretary.

[fol. 146] No. 5414, dated December 30, 1930, which order reads as follows:

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause No. 10326. Order No. 5414

In the Matter of the Application of WIRT FRANKLIN for Rules and Regulations to be Established by the Commission to Prevent Waste of Petroleum in the Producing Oil Fields of the State of Oklahoma re Supplemental Application of OTTO BRADFORD for Additional Rules and Regulations in the Oklahoma City Pool

ORDER

Comes now the petitioner herein and various and sundry producers of oil in the Oklahoma City Pool in the State of Oklahoma, and the Commission having made an investigation of the matters alleged in the above petitions in this cause and of the conditions in the Oklahoma City Pool, and being fully advised in the premises, finds:

(a) That production in the Oklahoma City pool has heretofore and is now being carried out upon the time proration plan. During the hearings in this cause prior to the issuance of Order No. 5369 therein, much testimony was taken relative to whether or not waste would best be prevented by a continuance of the time proration plan or the application of a percentage proration plan somewhat similar to that in force in the other oil fields of Oklahoma. After the filing herein of the petition of Otto Bradford further hearings were had, being finally concluded, and the matter submitted on December 22, 1930. During the course of these hearings a percentage plan of proration having been approved by an Operators' meeting and submitted, the Commission directed the Operators' Committee heretofore appointed by the Commission for the Oklahoma City pool, to formulate and submit for the consideration of the Commission a revised plan for the application of percentage proration in the Oklahoma City pool. Pursuant to such direction the said Operators' Committee has filed a proposed plan with the Commission.

(b) That under the operation of the Proration Orders heretofore placed in effect by the Commission as shown by the reports of the Commission's Umpire, and filed with the Commission, certain wells in the Oklahoma City pool have produced during less than the time allowable under such orders, making said wells under produce, there has been no available market outlet for the oil produced from some wells in said pool which have produced in obedience to the terms of said orders, making certain wells under run and certain wells have produced more than the allowable time under said orders and are overproduced. It is therefore necessary in any change of plan to make provision whereby such wells may be brought to a condition of "even" under said orders, the order this day issued or any future orders.

(c) That conditions which have heretofore prevailed rendering it inexpedient to apply the percentage proration plan to the Oklahoma City pool, particularly lack of facilities to make a proper gauge of potential for the application of percentage prorating, have now become sufficiently modified that a reasonable percentage plan of proration can be applied.

[fol. 147] (d) That under the proration plan now in operation in the Oklahoma City pool, the basis upon which the time of opening and closing the wells has been a fixed number of hours in each 12-day period. The present period will come to an end at 7:00 A. M. January 3, 1930, and for the efficient operation of the plan this order should become effective as of that date and hour.

From and after 7 o'clock A. M. January 3, 1931, and until otherwise ordered by the Corporation Commission, such ratable production of oil from the Oklahoma City pool and such proration among the wells in said pool of the reasonable market outlet for said pool as may from time to time be ordered by the Corporation Commission, shall be applied in accordance with the following plan, to-wit:

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(1) The period commencing at 7 o'clock A. M. January 3, 1931, and ending at 7 o'clock A. M. on the first day of

April, 1931, shall constitute the first potential period, and each three consecutive calendar months thereafter, commencing at 7 o'clock A. M. on the first day of the first month of said three months period and ending at 7 o'clock A. M. on the day following the last day of the third month shall constitute a potential period.

(2) As to each well in the pool, the first potential determined during any potential period shall constitute its tentative potential for that period, and based on such tentative potential and the percentages of potential which the Corporation Commission allows to be produced from time to time during such potential period, the tentative allowable production of each well during such potential period shall be determined in the manner hereinafter provided, and, except as hereinafter otherwise provided, each well in the pool shall, during such potential period, be permitted to produce its tentative allowable production for such period so determined.

(3) As to each well in the pool, except as hereinafter otherwise provided, the corrected potential for each potential period shall be the average of the tentative potentials so determined for that and the next succeeding potential period, to be determined as soon as the tentative potential for such succeeding period has been determined, and, based on such corrected potential and the percentages of potential which the Corporation Commission allowed to be produced from time to time during the potential period to which same is applied, the corrected allowable production for such potential period shall be determined, and the amount by which the actual production of any well during any potential period exceeded or was less than the corrected allowable for such potential period shall be carried over in to the next potential period as a charge or credit against or in favor of said well, as the case may be.

(4) In the event during any potential period any well, subsequent to the determination of its tentative potential for such period, is shot, cleaned out, deepened, tubed, put on air-gas lift, or plugged back in such manner as, in the opinion of the operator or of the Umpire, to materially affect its potential as determined in the next succeeding potential period, then the corrected potential of such well

for said current potential period shall be agreed on by the operator of such well, the Umpire and the majority of the Operators' Committee, and in the event they are unable to so agree, the Umpire shall immediately refer the matter to the Corporation Commission for determination, and pending final determination by the Corporation Commission, [fol. 148] the corrected potential of such well for such current potential period shall be that fixed by the Umpire and a majority of the Operators' Committee.

(5) The tentative allowable production and corrected allowable production of each well in the pool for any potential period shall be that determined as hereinabove provided, plus or minus, as the case may be, any credits or charges in favor of or against said well carried over from the preceding potential period.

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(1) At 7 o'clock A. M. on the first day of each potential period, each well in the pool shall, except as hereinafter otherwise provided, be completely shut in, and remain shut in until opened for the purpose of having its tentative potential determined in accordance herewith, provided, that notices as hereinafter prescribed, with respect to time of taking such potentials on the first day of any potential period, may be filed with the Umpire on or before 12 o'clock noon of the preceding day.

(2) "Before any well in the pool is opened for the purpose of having its potential determined, the owner or operator thereof shall file with the Umpire at his office in Oklahoma City, on or before 12 o'clock Noon of the day preceding the day on which such well is to be opened for such purpose, a written notice giving the name and address of the operator in charge of said well, the name of the operator's representative who will witness the test of said well, the name and location of the lease on which the well to be tested is located, the serial number of said well on the lease, and the hour, not earlier than 8 o'clock A. M. nor later than 1 o'clock P. M., at which the well will be opened for such purpose. Such notices shall remain on file in the office of the Umpire, and be subject to inspection by any producer in the pool, and it shall be the duty of the

Umpire to maintain available for such inspection in his office from 1 o'clock to 5 o'clock each afternoon a list of all wells which are to be tested during the succeeding day."

(3) When, in pursuance hereof, a well is permitted to be opened for the purpose of determining its potential, it shall be permitted to produce for four hours to be taken continuously, whether or not the well produces continuously during such time, and to be computed from the hour and minute oil first flows into lease tankage from the oil and gas separator. The amount of oil produced from said well during said four hour period multiplied by six shall constitute the tentative daily potential of said well for the current potential period.

(4) For the purpose of determining the amount of oil produced during said four hour test period the oil produced during the period is to be gauged in lease tankage which has been strapped in accordance with the usual and customary practice prevailing in the Oklahoma City field, and the amount of oil produced shall be calculated on the basis of ninety-seven per cent tank tables. The usual and customary tests and deductions shall be made for water and B. S. content, and the oil shall be gauged only after it has stood in lease tankage for a period of at least one hour.

[fol. 149] (5) The potential of each well in the pool is to be determined as soon as practical after seven o'clock A. M. on the first day of each potential period, provided, wells which on the 3rd day of January, 1931, are over produced under time proration are to remain shut in until they are even, and wells which on the first day of any potential period have not served their shut in time and time charged against them account initial test, as provided by orders of the Corporation Commission, shall remain shut in until they have served such shut in time and time charged against them.

(6) The Umpire shall appoint a representative of an operator who is in no way interested in the well to be tested to be present and witness the test being made of each well, and it shall be the duty of the representative so appointed by the Umpire to remain at the well which is being tested during the entire time the same is being produced for the purpose of determining its potential, and to witness all operations, tests for B.S. and/or water content, measure-

ments and/or calculations made for the purpose of determining the actual production of oil made by the well being tested during the test period as above defined. Immediately upon the completion of such test, the representative appointed by the Umpire and the representative of the operator shall file with the Corporation Commission, and a copy thereof with the Umpire, a written statement duly verified by both representatives on form to be approved by the Corporation Commission, showing the amount of oil produced by said well during the test period as above defined.

(7) In the event the Umpire's representative, and well owner's representative at the testing of the well, are agreed as to the daily potential of the well as determined by the test, the operator may continue forthwith to produce said well until there has been produced therefrom, including the amount produced during the test, the total allowable, to be calculated as hereinafter provided, for the current month. In the event the representatives of the Umpire and the well owner are not agreed as to the daily potential of any well, the well shall be shut in at the close of the test, and the matter referred to the Umpire. If the Umpire and the operator agree as to the daily potential of the well, the operator shall, thereupon, be permitted to produce the well until it has produced, including the amount produced during the test, its tentative allowable for the current month based upon the potential so agreed upon. If well owner and Umpire are unable to agree as to the daily potential of any well, the matter shall be referred to the Corporation Commission for determination, and, pending final determination by the Commission, the operator shall be permitted to produce the well until, on the basis above outlined, it has produced a tentative allowable for the current month calculated on the basis of the daily potential as fixed by the Umpire.

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(1) The tentative allowable production of any well for the remainder of the month of January, 1931, from seven o'clock A.M. on January 3rd, to seven o'clock A.M. on February 1, 1931, and for each month thereafter, shall be determined, (a) for the remainder of the month of January, by multiplying its tentative potential for said month by the percent of allowable production as fixed by the Corporation

Commission for that month, and the product by 29, and, (b) for each month thereafter, by multiplying its tentative potential for said month by the percent of allowable production for that month as fixed by the Corporation Com- [fol. 150] mission, and the product by the number of days in the month, and by adding to or subtracting from the product so obtained all credits or charges, as the case may be, carried over from the preceding month and/or potential period, provided, the tentative allowable production of wells, which on the 3rd day of January, 1931, or on the first day of any subsequent potential period are shut in account being over produced under time proration or account not having served their shut in time and time charged against them account initial test, as prescribed by orders of the Corporation Commission, for the remainder of the month in which they, respectively, become even or complete their shut in time and time charged against them account initial test, shall be determined by multiplying their tentative potential last determined by the percent of allowable production for that month as fixed by the Corporation Commission, and the product by the number of days in such month subsequent to the day and hour on which such wells, respectively, became even or completed their shut in time and time charged against them account initial test.

(2) The Umpire shall advise each operator each month by written notice the tentative allowable production for such month of each well being operated by such operator, such notice to be given for the month of January, 1931, on, or as soon as practical after the third day of said month, and for each month thereafter, on, or as soon as practical after the first day of said month, and no operator shall produce from any well in the pool during any month a greater amount of oil than its tentative allowable production for that month determined as herein provided.

(3) The under produced time of wells which on January 3, 1931, are under produced on time proration, shall be converted into barrels of oil on the basis of the tentative potentials of said wells respectively, for the first potential period, and the amount in barrels of oil of the under production of each said well so arrived at shall be credited to it as an underage as of 7 o'clock A.M. on the third day of January, 1931.

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(1) Each operator shall each day furnish to the Corporation Commission on forms to be prescribed by the Commission, written statements sworn to by an authorized representative of the operator, showing for the preceding day the name and address of the operator, the name and location of the lease on which are located either oil or gas wells, and, as to each well on each lease, the tentative allowable production for the current month, determined as herein provided, the overage or shortage from the preceding month, the net tentative allowable production for the current month, the production on the day for which the report is made, the balance remaining of tentative allowable production for the current month, and as to each lease, the amount of oil shipped by pipe line and by tank car, with the name of the pipe line and/or railway company transporting same, as the case may be, and the name and address of the purchaser of oil so shipped.

(2) Each operator shall also file with the Corporation Commission each day, on forms to be prescribed by the Commission, sworn statement showing for the preceding day the total amount of gas produced from each well which has been classified by the Corporation Commission as a gas well, the disposition made of the gas produced therefrom. the amount of hydro-carbon liquid produced therefrom. and the disposition made of such liquid.

[fol. 151] (3) Where gas wells which produce hydrocarbon liquid are located on the same lease on which are located oil wells, the gas wells producing such liquid shall not be permitted to produce into the same tanks or into tanks in any way connected with the same tanks into which oil wells are producing. In the event the liquid production from gas wells located on a lease on which are also located one or more oil wells, is disposed of as pipe line oil, the amount of oil produced by gas wells on any such lease during any month shall be deducted from the allowable production for said month of the oil wells located on the same lease, such deduction to be made from the allowable production of each such oil well in proportion to its potential determined as hereinabove provided.

(1) Before testing any wells for potential during the month of January, 1931, and within five days after the end of each month thereafter, each operator shall file with the Corporation Commission on forms approved by the Commission, a sworn statement with respect to each lease, showing the name and address of the operator thereof, the name and location of the lease, a list of the lease tanks on the lease showing pipe line numbers of each tank, a list of all tanks used as lease tanks off the lease, showing the location, pipe line company numbers thereof, and the amount of oil in each tank as of 7 o'clock A.M. on the 3rd day of January, 1931, and as of 7 o'clock A.M. on the first day of each month thereafter.

(2) The Umpire shall forward to each producer each month a statement showing as to each oil well in the field its potential, its tentative allowable for the preceding month, any overage or underage as of the first day of the preceding month, its net tentative allowable for the preceding month, its actual production during the preceding month, and its overage or underage, if any, as of 7 o'clock A.M. of the first day of the current month, and showing as to each lease the stock of oil on hand as of 7 o'clock A.M. the first day of the preceding month, the total production during the preceding month, the total shipments during the preceding month by pipe lines and tank cars, showing the amount shipped by each, and stocks on hand as of 7 o'clock A.M. the first day of the current month.

(3) Copies of all reports herein provided to be furnished to the Corporation Commission shall at the same time be furnished the Umpire at his office in Oklahoma City.

(4) Any person, firm or corporation transporting crude oil from the Oklahoma City field shall file with the Corporation Commission each month, on or before the tenth day of the month, a statement in duplicate showing the number of barrels of crude oil run from each lease in the field during the preceding month, and each railroad company which transports crude oil by tank car from Oklahoma City shall each month file with the Corporation Commission a statement in duplicate showing as to each shipment of oil from Oklahoma City, the name of the shipper, the name of the

consignee, the destination of the shipment, the number of cars shipped showing the serial number of each car and the weight of the shipment.

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It is hereby made the specific and mandatory duty of the Umpire to report any violations of this order to the Corporation Commission.

[fol. 152] (e) That under the present conditions the application of a percentage plan of proration will serve to prevent waste in the Oklahoma City pool.

(f) That due notice on all persons and classes interested in the proceeding and in the rules and regulations to be established hereby has been given, as required by law, by publication for a reasonable time in a newspaper of general circulation in this State and otherwise.

It is therefore ordered by the Corporation Commission of the State of Oklahoma as follows:

Due to the situation in regard to the underrun and underproduced wells, the percentage of allowable runs this day fixed for the Oklahoma City pool, shall until further order of the Commission, and notwithstanding any other provision of this Order or of the general order this day issued, be applied as follows:

1. All overproduced wells shall be entirely shut in until they have made up such overage and are again "even".

2. Wells which are even shalll be allowed to produce only 2/3 of their allowable production as fixed in the general order this day issued.

3. The amount of allowable production said general order having been calculated upon the percentage of all wells in said pool whether underproduced or overproduced or even, that amount of oil, which, except for this section of this order, would be allotted to the overproduced wells and 1/3 of that amount of oil which, except for this section of this order, would be allotted to the even wells, shall be allotted to the underproduced wells in said pool. In addition to the allowable production of said wells as fixed in the general order this day issued, pro rate according to the potential production of said underproduced wells until all of

said underproduced wells are even, at which time the Umpire shall forthwith report that fact to this Commission, that the Commission may then make a supplemental order placing all wells in said pool upon an equal basis of production.

Jurisdiction of the subject matter of this order and of this cause is hereby retained by the Corporation Commission and notice is hereby given that supplemental and ancillary orders may be made herein from time to time as required by new developments and as instructions to the Umpire and Operators' Committee and said Umpire and Operators' Committee are instructed to report from time to time for the action of this Commission any pertinent facts or recommendations bearing upon the operation of the rules and regulations.

Done at Oklahoma City this 30th day of December, 1930.

Corporation Commission of Oklahoma. —— ——, Chairman. (Signed) Fred Capshaw, Commissioner. (Signed) E. R. Hughes, Commissioner.

Attest: (Signed) E. D. Hicks, Jr., Secy. (Seal.)

[fol. 153] No. 5437, dated February 10, 1931, which order reads as follows:

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause No. 10326. Order No. 5437

In re Application of WIRT FRANKLIN et al., for the Modification of Proration Orders No. 5413 and No. 5414

The potential production of the Oklahoma City field found by this Commission to be approximately 2,000,000 barrels, daily production, of 24 hours. Proration order so modified as to permit an allowable flow of 125,000 barrels per day of 24 hours or 6¼ per cent on an estimated 2,000,000 barrels daily production for the Oklahoma City field, or an increase of from approximately 80,000 barrels to 125,000 barrels, daily.

REPORT OF THE COMMISSION

Opinion by PAUL WALKER, Chairman:

The applications of Wirt Franklin and of Jones Bros., et al., seek the modification of proration orders Nos. 5413 and

5414 of this Commission by increasing the allowable takings in the Oklahoma City field, up to 10 per cent. The application of Wirt Franklin was modified verbally during the proceedings by requesting an increase of the allowable takings up to 5 per cent, based on the potential production of the Oklahoma City field as found by this Commission in its Order No. 5413, issued herein on December 30th, 1930, and there seems to have been at least a tacit acquiescence on the part of the other applicants thereto, though not necessarily on the part of some of the other producers who manifest hostility to any system of proration which can deny them the opportunity to take from their wells the petroleum which they can utilize either in manufacturing or in marketing.

The issues herein are relatively simple because the parties agree that for the purpose of this hearing and investigation, proration and equitable taking are recognized as valid and that the laws with reference thereto are not herein under attack, having been passed upon by the Supreme Court of this State in the case of Julian Oil & Royalties Co. vs. Capshaw, et al., 292, Pac. 841; and in the District Court of the United States for the Western District of Oklahoma in Champlin Refining Company vs. Corporation Commission, et al., No. 1156 and related cases. The Courts have held that proration and equitable taking are valid, under the Oklahoma law.

The only question at issue herein, aside from that of waste which is always present in any hearing of this character, is, shall the allowable and ratable takings from the Oklahoma City field be increased and if so, how much. The answer to that question is dependent upon the market demand, a thing wholly elusive and most difficult, if not im- [fol. 154] possible, of determination.

The evidence herein consumed a period of approximately six days and, despite the limited issues, took a wide scope, sufficiently illuminative, perhaps, for a general understanding of the theory and contentions of the various parties on the matter of proration and especially on the question of increasing the allowable takings.

The testimony seems to have been very largely determined by the particular interest of the parties themselves. Nor have some of these parties been altogether consistent in their attitude toward proration; thus those

desiring immediate opportunity to market an increased amount of crude petroleum generally favor an increase in allowable takings under proration, whereas those more anxious to preserve the market stability and to protect interests elsewhere, generally favor the maintenance of the present percentage of allowable takings from the Oklahoma City field, and the least possible market competition. Some of the producers whose interests are chiefly in the Oklahoma City field, however, stand squarely on the present policy of proration and suggest the limiting of takings to the actual visible market capacity, and that, of course, on a ratable basis, contending that having relied on the policy of proration and the practice of proration in the Oklahoma City field, they have made no effort to provide an immediate or approximate provision for the taking care of increased runs.

The present status of proration in the Oklahoma City field may be likened to a dam which is built to impound water at a time of rainy seasons or floods. The water once having been impounded and the dam built, to immediately loosen these waters by the blowing up of the dam or releasing the flood gates would mean disaster through floods to the territories and the people immediately below the dam. Thus it is in the present situation. The State, has, under the present laws, which have thus far been sustained by the Courts, as a conservation policy, embarked upon a system of proration.

The Oklahoma City field has been prorated until its production has been reduced to the minimum, now approximately 80,000 barrels. Some of the chief producers in this field have made little or no attempt to market their crude petroleum, hoping for a day when the production generally would have so declined or have been so taken care of as to bring about a greater or more advantageous market for the Oklahoma City field.

[fol. 155] Nor have they made any provision for storage, in case proration should be lifted, or so increased as to throw tremendous quantities of crude petroleum from the field on the market at once. Therefore, the State, having developed this condition and having brought about this situation, is in duty bound to use its best efforts to protect the people thus affected and thus relying upon its protection. The Corporation Commission having thus far followed the

policy, and the State and its people having relied thereon, could not, it appears, in good conscience, deliberately and precipitately abandon its former policy and right about face without giving persons thus relying upon this kind of protection some opportunity to look out for the future.

Any assumed discussion of the so-called conservation laws and of the policy of proration would be largely beside the issues, wherein the validity of proration and equitable taking is recognized and only a modification of the orders to permit increased takings is involved, unless such increase might be tantamount to a lifting of proration entirely. This is not contemplated.

The amount of allowable takings from the Oklahoma City field must be dependent upon the market demand, and the issues, we think, herein, must be decided upon that ground. Before entering upon a discussion of the evidence thereon or a determination thereof, however, we must give attention to the question of waste.

The applicants contend that any permissable amount of crude petroleum may be taken from the Oklahoma City wells and the Oklahoma City field without waste, either physical or economic. This the opponents of the application deny.

Let us consider first the question of physical waste. There is on this question, some argument and some disagreement between applicants and protestants. Wirt Franklin testified that physical waste is now taking place in the Oklahoma City field through improperly cased wells which permit water to seep into the strata, or sands, thereby drowning out or driving back the oil, and through escaping, or transmission, of natural gas from its natural stratum into the stratum or sand containing the crude petroleum and vice versa. This unnatural or improper transmission of natural gas from a gas stratum to an oil stratum and of oil from an oil stratum to a gas stratum could be and probably is productive of tremendous underground waste, the oil being absorbed in the dry gas sand and the gas go- [fol. 156] ing into a sand where it is not presently needed for the production of oil and retarding rather than aiding the oil recovery. Similar testimony of similar instances of waste was offered on behalf of other parties to the proceedings and by some of the witnesses for the protestants.

All parties agree that this underground waste should be stopped through proper care of the wells; in some instances, perhaps, by plugging back and cementing and in others, by introducing additional string or strings of casing and cementing. But whatever the process or the cost, the necessities of the field demand the cessation of underground wastage and the protection of the wells against its recurrence. While the application of Wirt Franklin is based, partially, apparently, on the right to take additional runs of oil, as an emergency or salvage proposition, the evidence indicates that underground wastage may be taken care of wholly aside and apart from these applications and that the granting of the applications is not dependent upon the solution of this question. The Commission's announcement thereon at the conclusion of the hearing is indicative of its intention, as expeditiously as possible, to take care of this kind of wastage in the Oklahoma City field.

Economic waste, so far as this hearing is concerned, is too closely allied to physical waste to permit intelligent severance therefrom. Thus, one of the protestant's chief objections to increasing the allowable takings from the Oklahoma City field is based on the claim that such increased takings would tend to absorb markets which are now caring for the small or so-called stripper wells, generally estimated at some 30,000 to 60,000 wells in the State of Oklahoma, dependent upon the definition of a stripper well and the amount of crude petroleum which would designate a well within that class. In any event, it is contended that a flood of oil from the Oklahoma City pool would disastrously affect some 60,000 wells in the State outside of Oklahoma City pool and would close many of them down for a long time and that during this time these wells would, because of water and other damage, become in such condition that their operation would no longer be practicable. This would constitute both physical and economic waste, physical in the sense of the destruction of valuable properties, both to individuals and the State, and economic in the destruction of these properties and the co-incident in- [fol. 157] juries connected therewith, not only to the wells themselves but to the State and its people.

To that feature of economic waste wrapped up wholly in the question of price fixing, we shall not advert for the reason that both the State and the Federal Courts and the

parties presenting the proceedings involving proration, have assumed, apparently, that the provision of the laws relating to price fixing are invalid, and that the Corporation Commission is without authority to sit as a price fixing agency in the determination of the issues. The price of crude petroleum, however, is inseparably related to the question of economic waste. It is the demand for crude petroleum at a price which will permit the operation of wells which keeps men employed and wells operating. Without both a market demand and a price which will pay expenses, wells cannot be kept going or petroleum pumping through the pipe lines, to the trade. Therefore, much of the testimony, touching upon economic waste, had to do with the price which might be maintained in the Oklahoma City field and which might reflect itself to the other wells in the State, and in determining whether or not they would be kept in operation.

Another element of physical waste, not present, but contemplated or threatened, is that of earthen storage. Witnesses indicated that if an allowable taking is permitted far in excess of either the demand of the market or the ability of the market to absorb, operators who do not have access to pipe lines as advantageously as their neighbors and who are not provided with steel storage, will attempt to place oil in earthen storage. With this argument, we are not greatly impressed. It harks back to the days of the Cushing and the Healdton Fields, when the State had neither a convervation law nor a conservation policy. Earthen storage is now forbidden in any field in Oklahoma both by statute and by specific orders of this Commission. Earthen storage cannot be had except it be accompanied by physical waste as well as untold hazards in a field thus proximate to a great city. Our orders specifically prohibit the allowing of oil "to leak or escape from natural reservoirs, wells, tanks, containers, or pipes". (See rule 12 of this Commission's Order No. 1299.). We think, however, in this connection, inasmuch as the question has been raised that we should give specific notice that earthen storage cannot either be used or tolerated in the Oklahoma City field.

[fol. 158] Another and an exceedingly important problem, directly connected with the question of physical waste but also bearing upon the question of economic waste and

the ultimate recovery of the field, is the question of natural gas wastage in connection with the production of crude petroleum. A witness, a competent petroleum engineer, testified that if the wells in the Oklahoma City field were opened to 10 per cent capacity daily flow, assumably based upon the Commission's estimated potential in its Order No. 5413, of near 6,000,000 barrels, there would be a production in the Oklahoma City field of approximately one and one-half billion cubic feet of natural gas, the greater portion of which would be blown into the air and dissipated.

Involved in this wastage of natural gas to an extent which to the layman's mind seems criminal and which to any mind ought to be conceded to be improvident, is the question of the destruction of gas energy. The potent and necessary element, or power, is the recovery of crude petroleum. Oklahoma City wells are exceedingly deep, generally producing crude petroleum from a depth below 6500 feet, and the gas energy so necessary for their production, once dissipated, cannot be restored. The relationship of wastage of natural gas from these wells and the allowable takings of crude petroleum from the wells, is an important and a necessary one. We should not permit unlimited flow from these wells until we can be convinced that the natural gas energy is being conserved to the best advantage.

Mr. J. R. McWilliams, a competent petroleum engineer, employed by the Skelly Oil Company, called as a witness by counsel for the applicants, Jones Bros. et al, testified that the gas ratio in the production of oil, through pinching in of the wells and through mechanical devices, could be kept down as low as 800 to 1500 cubic feet of natural gas per barrel of oil and generally not to exceed 2000 cubic feet per barrel of oil produced. Another petroleum engineer testified that 3000 cubic feet of natural gas was the maximum required for producing a barrel of crude oil. There is no evidence that any reasonable amount of study, care or caution has been given by operators generally in the Oklahoma City field to the conservation of this natural gas energy or the prevention of waste of natural gas in connection with the production of crude petroleum. We should have jurisdiction to prevent such waste and to require the preservation of such energy. If there is any weakness in the law in this respect it should be amended. We ought not to [fol. 159] be compelled to assume any such weakness for

the purpose of this administrative legislation. These facts and these circumstances indicate a cause for failure to permit unlimited taking of crude petroleum from the wells in the Oklahoma City field, aside from the admitted validity of the present laws and regulations, and the assumed wastage if unlimited production of crude petroleum were permitted.

The chief ground upon which the applicants base their request for increasing allowable takings is that there is an available market if they could produce the oil from their wells to supply this market. The reply of the protestants is that nobody is being restricted at the present time from producing oil which can be absorbed by the market, provided that such oil can be taken ratably. It is the applicant's counter reply that they do have a market on terms which are satisfactory to themselves but which may not be agreed to by those insisting on maintining the present posted market price. The situation here presents somewhat of a dilemma. An operator cannot take oil from the field unless he is willing to take it ratably; that is, if he has a market demand he cannot supply that demand in excess of the prorated allowances from his wells unless he is willing to divide up his market with his neighbors and take from them ratably. Out of this dilemma, the only practicable or feasible solution seems to be, admitting proration and equitable taking, an allowance of takings sufficient to absorb the market offered. The situation calling for relief is not based altogether on logic but is one requiring, under the law, the protection of all the producers of the common source of supply, and presumably, the public.

Certain it is that the great and ultimate object of the conservation laws was the protection of the public, and by the public we mean the State of Oklahoma and its people. It was the little and so-called independent producers who came to the legislature and to the Corporation Commission in 1914 and 1915, for protection. It was said that the big and the powerful interests were crushing out the small and the independent producer through taking oil from their own wells, thereby draining his properties while refusing to buy any of his production.

Now it seems to be chiefly the distressed producers who are seeking the widening of proration, for the reason that

they have accumulated obligations which can only be met through turning some of the oil from their wells into cash. This is not altogether true for the reason that the Sinclair Company, one of the largest producers in the field, is unalterably opposed to the policy thus far pursued by the Corporation Commission.

Who would be helped and who would be injured by the [fol. 160] turning loose of production in the Oklahoma City field, beyond any reasonable ability of the market to absorb, is problematical, but, as always, the weaker would probably suffer first and the persons who are now most earnest and insistent in the requests for increasing, or lifting of proration, could not hope to escape the effects, of the probabilities of being the first to suffer, and, likely, the ones to meet the most disaster.

As to the market demands and the effect of increasing the allowable takings, there is a constant conflict of testimony; the applicants contend that increasing the allowable takings would increase the market. The protestants, on the other hand, are of the opinion, generally, that any increasing of the allowable takings would not increase the market demand, and, some of them insist that an unreasonable increase of the allowable takings in the Oklahoma City field would be accompanied by withdrawals, to a certain extent, at least, from the market by some of the major pipe lines now taking oil. We cannot say that this is a threat because the witnesses, testifying under oath, must be assumed to have been giving their convictions as to the probable effect and result.

The applicants, on the other hand, contend that there is a demand for Oklahoma City oil. They introduced a number of witnesses who testified that they can sell oil if they can produce it; that they have contracts for a determinate and for an indeterminate amount of crude petroleum if it can be gotten, and at a price satisfactory to themselves. This testimony, in the very nature of things, must necessarily be of a very unsatisfactory character. Witnesses testified that they could not divulge buyer's names because of the possibility of losing sales thereby. Some of this testimony was put on by brokers who testified to indefinite demands for crude petroleum saying that certain persons had inquired of the ability to buy definite quantities of crude petroleum in the Oklahoma City field but did not push these inquiries when

advised of the low allowable takings and of the fact that their offers probably could not be absorbed at the price quoted. All in all, and possibly in the very nature of things it must be so, the preferred markets of the applicants and their supporters, are, in the words of the protestants, largely "nebulous". At any rate, they are indefinite and offer no basis on which we can predicate a definite finding.

The testimony, however, does indicate that the applicants and some of their supporters could and would market and take an increased amount of crude petroleum, and in addition to that which would be taken by the major pipe lines if the allowable takings were materially increased. In other [fol. 161] words, we think that the applicants, while not making a conclusive case, have made one which indicates that some relief should be granted. Again, how much, is the question.

The Oklahoma City field, the evidence indicates, is being discriminated against. It is our duty, if possible, to give those who have oil to sell, an opportunity to dispose of it, through so regulating proration as not to shut off the markets offered.

The evidence indicates that there has been a steady and gradual decline in the production and sale of Oklahoma crude petroleum, notwithstanding proration. The opponents of the present policies of proration ascribe this falling off in the market to the rules and regulations of this Commission, claiming that if there had been no proration the heavy and increased production of Oklahoma oils would have caused Oklahoma to continue to lead the other States of the Union in the production of crude petroleum. This partly begs the question for the reason that proration and equitable taking for the purpose of this hearing is admitted. Nevertheless the record does show that there has been a decline of Oklahoma production during the past three years of over 250,000 barrels, and a retrogression of Oklahoma from first to third place among the crude petroleum producing States of the Nation, and a falling off of the gross production tax to the State of more than three million dollars per year. How much of this is incident to the general depression which has swept the country and how much to something else, it is difficult to say. Certainly all the ills have not been due to proration and we cannot say that conditions would not have been worse had there been no proration, for

having been pioneered here proration has spread to Texas and California, though it has not been in use elsewhere except by voluntary action of operators in certain places, as in the Kansas fields.

Another inquiry which is pertinent to the allowable takings from the Oklahoma City field is whether the orders now in effect are actually being enforced. The umpire in the field has filed a number of complaints and the Commission has issued citations thereon against certain operators for taking more than their allowable runs. Trial has not yet been had thereon. Subsequent to the proceedings hereon which terminated in Orders 5413 and 5414, a number of complaints were filed on behalf of Champion, et al., alleging that a large number of operators generally throughout the field are violating the Commission's orders and are taking more than the allowable runs. These allegations on behalf of both [fol. 162] sides, if true, are exceedingly important because they would indicate that whereas the actual reported takings from the Oklahoma City field are now only about 85,000 barrels, they might in fact be considerably greater and, hence, while they offer no legitimate excuse for any producer to violate the orders of the Commission, they do indicate that with strict enforcement of the orders the allowable takings may be increased. This Commission must, so long as the law makes it its duty to impose equitable takings so far as is humanly possible, strictly enforce its orders thereon, without fear or favor, and without discrimination among producers in the field.

There were indications at the hearings of favoritism and of discrimination against certain operators. Without evidence thereon these must be considered fancied rather than real. We cannot assume that the umpire is not doing his duty to the very best of his ability. Nor do we have any evidence that he is not thus attempting to do his duty. But we do recognize that an unhealthy condition, or situation, exists in the Oklahoma City field. The umpire is nominated by the producers, or operators.

Certain operators have not felt warranted in co-operating therein. There is no law compelling them to do so. There ought to be some way, which the operators generally could suggest of direct representation, in the umpiring, for these persons who are suspicious of what is now being done. If this could be brought about it would go a long way toward relieving the tension in the Oklahoma City field.

The Corporation Commission is not equipped to police the Oklahoma City field, let alone all the fields of the State. It has certain conservation agents whose duty it is to look out for and prevent violation of physical waste. The law probably never contemplated that we should attempt, with these few agents, to police takings from any pool where there might be a potential production far in excess of any market demand. If the State intends that we should, it must make provision therefor by law. There are now, in the Oklahoma City field, something like 680 oil wells. In fairness to the operators it must be said that they generally manifest a willingness, voluntarily, to observe this Commission's findings and orders relative to proration and equitable taking. Without such attitude, enforcement of proration or equitable taking, would be a physical impossibility, under the present machinery, in a field of this size, not to mention the other fields in the State.

[fol. 163] The present situation as to practiced takings from the Oklahoma City field does present an element which must be taken into consideration in the order to be made herein as to allowable takings, especially in view of the fact that we must, under the law, use our best endeavors to enforce whatever order or orders we may make herein.

We come now to a determination of the figure to be used in the allowable takings. This we cannot arrive at with any mathematical accuracy; it must be purely an estimate; it must be largely a guess; it must hang on the ability of the market to absorb but must not be contingent upon any collusion among operators to discriminate against the Oklahoma City field. The applicants are basing their application for percentage increase in takings from the Oklahoma City field on the finding of this Commission's Order No. 5413, supra, as to the Oklahoma City potential, which the Commission estimated for February, 1931, at 5,838,804 barrels. The umpire in the Oklahoma City field now estimates the potential of this field at 6,254,964 barrels per day but gives the actual at not in excess of 3,000,000 per day in his testimony herein.

The testimony in the record indicates that this potential is altogether too high and that it is based on a 4-hour test of each well, made when the other wells were closed. It is contended that any reasonable estimate of the potential of this field must be based on at least a 24-hour test, with all

the wells producing at once. That, of course, is a physical impossibility because of the inability to find storage for any such test. A real test, which is altogether out of the question, would be a full production of the wells over a period of say, some thrity days. Various opinions from competent engineers and experts, were given as to the actual production of the Oklahoma City field; these range as high as three and one-half million barrels approximately, to as low as around one million barrels. The Commission should find, under the evidence, that the actual production of the Oklahoma City field would be not to exceed from two million to two and one-half million barrels per day. A 5 per cent allowance on such a potential would be a maximum of 125,000 barrels.

[fol. 164] Findings of Fact, Conclusions and Order

By the Commission:

From the evidence and testimony herein, the Commission finds and concludes as follows:

1. That for the purpose of this hearing and investigation the validity of proration and of equitable taking are admitted; that it is recognized by all parties to the proceedings that whatever their personal views may be, for the purpose of this hearing and investigation, the holdings and decisions are so recognized; and that no attack is being made on either herein.

2. That the principal issue involved is the amount of equitable taking which may be permitted from the Oklahoma City field, the written applications generally requesting an increase not to exceed ten per cent of the potential production of the field, but there being, apparently, a tacit acquiescence at the hearing on the part of the applicants, though not of all their supporters, to a five per cent allowable taking, based on the Commission's estimated potential production.

3. That the conservation laws, as to crude petroleum and natural gas, are bottomed on waste, and that whatever is done herein must recognize the principle of the prevention of waste, and, specifically physical waste.

4. That the Commission now, and at all times, has recognized that earthen storage of crude petroleum constitutes

waste, as defined by the conservation laws of the State and the rules and regulations of the Corporation Commission in reference thereto, and especially, as set forth in Rule 12 of this Commission's rules and regulations for the conservation of crude petroleum and natural gas, heretofore prescribed by this Commission in its general Order No. 1299, issued in its cause No. 2935; and that while the orders of this Commission relating to the Oklahoma City field have not in specific terms been directed against placing of oil in earthen [fol. 165] storage, such regulation or requirement is now in effect under the Commission's general orders, though such specific rule, for purpose of emphasis and notice, might be set out in the orders to be made herein.

5. That there is a large production of natural gas incident to the production of crude petroleum in the Oklahoma City field, the evidence indicating that on a ten per cent flow of all the oil wells in the field capable of production, there would be an incidental production of something like one and one half billion cubic feet of natural gas, the greater portion of which could not immediately be utilized either through casing-head gasoline manufacture or the disposal of the gas for industrial or domestic consumption, or in storage for future use, as energy for producing oil wells, or for fuel.

6. That the method of computing the potential production of the wells in the Oklahoma City fields, i. e., by a four hour gauge on a well while the other and surrounding wells are shut in, is fallacious in that it produces a potential production far in excess of the probable potential production of the field, either for any considerable time, or a thirty day, or even for a twenty-four hour period.

7. That while Order No. 5413 of this Commission, dated December 30, 1930, indicates a potential daily production of the Oklahoma City field, for February, generally based on a four hour gauge of 5,838,804 barrels, and the umpire now estimates, on this basis, 6,254,964 barrels, potential daily production, the evidence indicates that the actual present daily potential production of the Oklahoma City field is approximately 2,000,000 barrels, and the Commission so finds.

8. That the indefinite and indeterminate market said by the applicants herein to be available in the Oklahoma City

field, in addition to the crude petroleum, now taken, or to [fol. 166] be taken, by the so-called major companies and pipe lines, can only be ascertained by testing or "trying out" the market, and, possibly, at a somewhat increased allowable taking from the wells.

9. That this Commission, charged with the duty, under the law as construed in the court decisions, of enforcing proration and equitable taking, is required to see that such runs as are taken from the Oklahoma City field shall be taken equitably and ratably and without discrimination among the operators and producers in the field, or from the strata, or sands, from which the oil is being taken.

10. That for the purpose of relieving conditions in the Oklahoma City field, and for trying the market, the allowable taking of crude petroleum should be and is increased to 125,000 barrels per day, or 6¼ per cent of an actual potential production of 2,000,000 barrels per day.

11. That the Commission should retain jurisdiction of the subject matter hereof and of the parties hereto, and that permission should be given March 2nd, 1931, for the presentation of additional evidence to this Commission of the market demands of that date.

12. That the major pipe line companies and the major producing companies will be expected to take an increased amount of crude petroleum from the Oklahoma City field and to co-operate in taking at least the amount allotted herein to the Oklahoma City field.

13. That in estimating runs the following formula shall be used: On a 4-hour gauge of the wells in the Oklahoma City field, each taken separately, when the other wells were shut in, it is estimated that the daily potential production of the Oklahoma City field, for a period of 24 hours, is approximately 6,000,000 barrels. This estimate is arrived at by allowing each well to flow separately 4 hours, showing [fol. 167] a flow of 1,000,000 barrels. This figure of 1,000,000 is multiplied by 6 to give the flow for the 24-hour period, or 6,000,000 barrels.

But we believe a more equitable and fairer potential would be arrived at by the following method, i.e.; the testimony shows that a well opened by itself, when all the other wells are closed, will produce two and one half times as

much as it would with all other wells open at the same time. Therefore, we take the 4-hour flow, totaling for all the wells for this period approximately 1,000,000 barrels, and divide this number of barrels by two and one half giving 400,000 barrels. Since the evidence also shows that a well will not produce as much the latter part of the 24-hour period as it would during the first part of this period, it would, the testimony shows, be a fairer method to multiply by five, rather than by six. Multiplying 400,000 by five gives a potential of 2,000,000 barrels for the Oklahoma City field, or one third of the present estimated production for the field, approximate-.

In estimating the allowable runs from each well in the Oklahoma City field, on the basis of 125,000 barrels for the field, the true gauge will therefore be one-third of the estimated production, on the basis of the four hour gauge, multiplied by six, and the owner will be permitted 6¼ per cent thereof.

14. That the production of crude petroleum from the wells in the Oklahoma City field should be in such manner as shall not constitute unreasonable natural gas waste or unreasonable waste of natural gas energy.

15. That earthen storage of crude petroleum constitutes waste, is prohibited by the general orders of this Commission, and notice is hereby given that such storage in the Oklahoma City field would constitute waste and is specifically prohibited, as is likewise any other form of storage which permits leakage of oils.

[fol. 168] Order

Wherefore, premises considered, and the Commission being advised, it is therefore ordered:

1. That Orders Nos. 5413 and 5414 made and entered on December 30, 1930, be and the same are hereby modified and supplemented insofar as they affect what is known as the Oklahoma City oil field, and that the potential production of said field be and the same is hereby determined to be approximately 2,000,000 barrels of crude oil per day.

2. That the amount of allowable production from said Oklahoma City oil field be and the same is hereby increased

from the allowable heretofore determined, to 125,000 barrels per day, or 6¼ per cent of the potential production of 2,000,000 barrels per day as herein determined.

3. That each person, firm or corporation having the right to drill into and produce oil from the Oklahoma City oil field, may take from such pool, or area, or extensions thereof, 6¼ per cent of the potential production of the wells owned and operated by any such person, firm or corporation, and each person, firm or corporation having such right to drill into and produce oil from said pool be and they are hereby required to produce said percentage in such a way as not to constitute waste, and in such a way as not to constitute an unreasonable waste of natural gas or natural gas energy.

4. That the owners and operators of oil and gas property in what is known as the Oklahoma City oil field, be and they are hereby prohibited from storing crude oil in said field in earthen storage tanks or other storage facilities which permit leakage of oils in a wasteful manner.

5. That in estimating the allowable run from each well in the Oklahoma City field on the basis of 125,000 barrels for said field as herein determined, the true gauge shall be one-third of the estimated production on the basis of the [fol. 169] four hour gauge, multiplied by 6, and each owner and operator of any well or lease in said field shall be permitted 6¼ per cent of the potential production arrived at and determined by this method.

6. That jurisdiction of the subject matter and parties herein be and the same is hereby retained for the purpose of making ancillary or supplemental orders hereto, and March 2nd, 1931 be and the same is hereby set as the date for the presentation of any additional testimony of any interested party with respect to the matters and things here involved, and particularly as to any changed condition with respect to the market demand for crude oil or petroleum produced in said field.

7. That the pipe line companies and common carriers of crude oil and petroleum from the Oklahoma City oil fields, be and they are hereby ordered and directed to cooperate to the fullest extent with the producers in said field, and shall take such increased quantities of crude oil or petroleum

from said field as may be produced, without waste, under the terms and provisions of this order.

8. That the terms and provisions of Order No. 5413, and other orders heretofore made and entered, and now in effect, except as modified herein, shall remain in full force and effect.

9. This order to be in full force and effect from and after the date of its promulgation and until further order of the Commission.

Done at Oklahoma City this the 10th day of February, 1931.

Corporation Commission of Oklahoma. Paul A. Walker, Chairman. C. C. Childers, Commissioner. E. R. Hughes, Commissioner.

Attest: E. D. Hicks, Jr., Secy.

[fol. 170] No. 5468, dated April 20th, 1931, which reads as follows:

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause No. 10326. Order No. 5468.

In re: Application of Wirt Franklin for Rules and Regulations to be Established by the Commission to Prevent Waste of Petroleum in the Producing Oil Fields of the State of Oklahoma.

In re Supplemental Application in the Above-Entitled Cause of Otto Bradford, Umpire of the Oklahoma City Pool for a Modification of Proration Order No. 5437, and to Take Testimony for the Purpose of Determining Whether or not an Increased Allowable from the Oklahoma City Field Should be Made

FINDINGS OF FACT AND ORDER

On April 17th, 1931, the petitioner Otto Bradford, Umpire of the Oklahoma City pool, pursuant to notice of the hearing given both personally and by publication, presented his application for a modification of the Commission's Or-

der No. 5437. The applicant and numerous other witnesses were examined under oath, and exhibits showing the potential production, actual production, overage and underage in production, and the takings and shipments from the Oklahoma City field from February 1st, 1931, to April 15th, 1931, were introduced in evidence. Statements under oath as to probable taking and purchases from the Oklahoma City Field for the remainder of April and the month of May, 1931, were taken and the Commission being fully advised in the premises, finds as follows:

(a) That the area to be covered by the order is the Oklahoma City field as heretofore described in orders of this Commission, together with any new wells which may be brought into production during the continuance of the order and contiguous to or in the immediate vicinity of said field.

(b) A condition exists in the Oklahoma City field whereby the wells of many producers are both under-produced and under-run; that is to say, because of lack of market, some producers have been unable to produce the full allowable permitted under the orders of the Commission, and are therefore "under-produced", and some producers who have produced oil within the allowable have been unable to market or dispose of the same and are therefore "under-run". A part of this condition is due to misunderstanding in interpretation of the application of the Commission's Orders Nos. 5413 and 5414 which is now made clear and set at rest by the Commission's Journal Entry No. 1876 permitting all producers who had not run 6¼ per cent of their potential after February 10th, 1931, to produce the amount of oil which they would have so produced in the period from February 10th, 1931 to March 1st, 1931, had they produced the full 6¼ percent of the potential production of their wells during that period. Another contributing cause was the failure of some purchasers to take the full amount of their nominations of purchase, upon which the Commission's orders have been based. In order to enforce ratable taking, it is necessary that proper provision be made to take care of the underproduced and under-run oil during a reasonable period of time. The total of this under-run [fol. 171] and under-produced oil as of this date, is 1,700,000 barrels. In addition thereto, oil produced during the

test period for new wells, permitted by the Commission's Orders, will probably amount to more than 3300 barrels per day during the remainder of April and the month of May, 1931.

(c) The potential production of the Oklahoma City field as of this date is approximately 2,240,000 barrels of oil per day. This figure is arrived at by multiplying the four hour actual gauge by two, which is the same thing as multiplying the four hour gauge by six and dividing by three, as heretofore prescribed by the Commission. The Commission finds that the production of oil wells during a four hour open flow is ordinarily in excess of the average flow over any considerable period of time, and finds that the method above stated produces a fair representation of actual daily potential production. Upon the same basis, the Commission finds that the average potential production of the Oklahoma City field for the month of May, 1931, will be approximately 2,549,489 barrels of oil per day.

(d) The present reasonable market demand in the Oklahoma City field now somewhat exceeds an average of 150,000 barrels per day. What such demand will be for the remainder of April and the month of May, must depend upon consumption and other conditions. The Commission finds, however, that such reasonable market demand will probably not exceed 165,000 barrels per day for the remainder of April, and 175,000 barrels per day for the month of May.

(e) The conditions of overproduction and imminent and probable waste existent when Orders No. 5369, 5413 and 5414 were issued, still continues and requires the making of proper orders herein to prevent such waste and promote conservation of oil and gas in the manner provided in the statutes of this State.

Order

It is therefore ordered by the Corporation Commission of the State of Oklahoma—

I

The area to be affected by this order is that set out in the Findings of Fact heretofore made in this order.

II

All existing orders of this Commission relating to production of crude oil and natural gas in the Oklahoma City field as modified by any subsequent orders and as modified hereby, are hereby continued in full force and effect until the further order of this Commission.

III

Effective 7 A. M. April 20th, 1931, and continuing until 7 A. M. May 1st, 1931, all wells in the Oklahoma City field, not now illegally over-produced, shall be permitted to produce 7 per cent of their potential production as determined by the Umpire under the orders of this Commission, less any permitted over-production. Effective 7 A. M. May 1st, 1931, and continuing until 7 A. M. June 1st, 1931, such wells shall be permitted to produce 6 per cent of such potential production, less any such permitted over-produc-
[fol. 172] tion. Wells over-produced in violation of the orders of this Commission above designated as "illegally over-produced" shall remain shut in until such over-production is made up and such wells are again "even".

IV

The Umpire shall permit to be supplied any reasonable market demand over and above the reasonable market demand necessary, to take care of the percentage of production provided for in paragraph III hereof, but shall from time to time allot the same to the under-produced and under-run wells. If and when the under-run and under-produced condition shall be eliminated in the field, the Umpire shall immediately report that fact to the Commission for its further action and allotment of such market.

V

Jurisdiction of this cause is hereby retained for the purpose of making such other, further or different orders, rules and regulations as may from time to time appear to be proper, and any interested party may at any time apply

to the Commission for any such orders, rules and regulations.

Done at Oklahoma City this the 20th day of April, 1931. Corporation Commission of Oklahoma. (Signed) Paul A. Walker, Chairman. (Signed) C. C. Childers, Commissioner. ——, Commissioner.

Attest: (Signed) E. D. Hicks, Jr., Secy.

[fol. 173] No. 5486, dated May 28th, 1931, which reads as follows:

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause No. 10326. Order No. 5486

In re Application of WIRT FRANKLIN for Rules and Regulations to be Established by the Commission to Prevent Waste of Petroleum in the Producing Oil Fields of the State of Oklahoma

OPINION AND ORDER

This cause came on for hearing on the 28th day of May, 1931 upon the petition of Otto Bradford, Umpire for the Oklahoma City field, filed herein on the 22nd day of May, 1931. Due notice of this hearing had been given by publication in a newspaper of general circulation in the state, and also by personal service upon all persons to be affected by this order. The testimony of numerous witnesses was taken under oath, and exhibits showing the potential production, actual production, overage and underage in production, and the takings and shipments from the Oklahoma City field from June 1st, 1931, to September 30, 1931, were introduced in evidence. Statements under oath as to the probable takings and purchases from the Oklahoma City field, subsequent to the 1st day of June, 1931, were taken, and the Commission being fully advised in the premises, finds as follows:

(a) The condition of production in excess of reasonable market demands, and imminent probable waste existent

when Orders Nos. 5369, 5414, 5437 and 5468, were issued, still continue, and requires the making of proper orders herein to prevent such waste, promote conservation of oil and regulate the equitable, fair and proportional taking thereof, as provided by the statutes of this State.

(b) The total potential production of the Oklahoma City field as the same has been described and denominated in the previous orders of the Commission, and the reasonable market demand, is such as to permit the taking from the Oklahoma City field of 6 per cent of the potential production of each of the wells in the field, determined and calculated upon the basis heretofore prescribed by the Commission.

(c) Order No. 5468 as the same was effective from 7 o'clock A. M. May 1, 1931, until 7 o'clock A. M. June 1, 1931, should be continued in full force and effect from June 1, 1931 at 7 o'clock A. M., to July 1, 1931, at 7 o'clock A. M.

(d) The jurisdiction of the cause and of the petition should be retained for the purpose of determining the amount which the several wells in the Oklahoma City field should be permitted to produce subsequent to July 1, 1931, at 7 o'clock A. M.; and the petition and cause should be set for further hearing and the taking of any additional testimony which may bear upon the situation as it exists in the Oklahoma City field at that time.

Order

It is therefore ordered by the Corporation Commission of the State of Oklahoma:

That Order No. 5468 and all existing orders of this Commission relating to the production of crude oil and natural gas in the Oklahoma City field, as modified by any subsequent orders and as modified hereby, are hereby continued in full force and effect until the further order of this Commission, and effective at 7 o'clock A. M., June 1, 1931, and continuing until 7 o'clock A. M. July 1, 1931, and/or until further order of this Commission, all wells in the Oklahoma City field not now illegally over produced shall be permitted to produce 6 per cent of their potential production as determined by the Umpire, under the orders of this Commission, less any permitted over production.

[fol. 174] Wells over produced in violation of the orders of this Commission, designated in previous orders of the Commission as illegally over produced, shall remain shut in until such over production is made up and such wells are again even.

The Umpire shall permit to be supplied any reasonable market demand over and above the reasonable market demand necessary to take care of the percentage of production provided in the preceding paragraph hereof, but shall from time to time allot the same to the under-produced and under-run wells. If and when the under-run and under-produced condition shall be eliminated in the field, the Umpire shall immediately report the fact to the Commission of its further action and allottment of such market.

Jurisdiction of this cause and of the said petition is hereby retained for the purpose of maknig such further additional or different orders, rules and regulations as may from time to time appear to be proper, and any interested party may at any time apply to the Commission for any such order, rules and regulations.

Further hearing of this matter and cause is continued until the 29th day of June, 1931, at 10 o'clock A. M., at the office of this Commission, for the purpose of further determining the potential production of the Oklahoma City field, and the reasonable market demand of oil therefrom, and the general conditions thereof, at which time any interested party may offer any additional evidence or testimony; and notice is hereby given that this Commission will at such time and place consider further order, or orders, rules and regulations, governing and affecting the production of wells in the Oklahoma City field.

Done at Oklahoma City this the 29th day of May, 1931.

Corporation Commission of Oklahoma. (Signed) Paul A. Walker, Chairman. (Signed) C. C. Childers, Commissioner. (Signed) E. R. Hughes, Commissioner.

Attest: (Signed) E. D. Hicks, Jr., Secretary.

[fol. 175] No. 5548, dated June 27th, 1931, which reads as follows:

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause No. 10326. Order No. 5548

In re Application of WIRT FRANKLIN for Rules and Regulations to be Established by the Commission to Prevent Waste of Petroleum in the Producing Oil Fields of the State of Oklahoma.

OPINION AND ORDER

Be it remembered that on this the 27th day of June, 1931, the Commission having before it the application of Otto B. Bradford, Umpire in the Oklahoma City field by his Attorney Ralph G. Thompson for an increase in the allowable runs from the Oklahoma City field and application of C. O. Rison and B. G. Patton on behalf of the Special Operators Committee in the Oklahoma City field for an increase in the allowable runs in the Oklahoma City field, which allowable runs in both applications is for the purpose of supplying the market demand, finds:

That Order No. 5486 herein issued by this Commission on the 29th day of May, 1931, permitting allowable runs of 6 per cent of the potential production of the wells as determined by the Umpire, also provides that:

"The Umpire shall permit to be supplied any reasonable market demand over and above the reasonable market demand necessary to take care of the percentage of production provided in the preceding paragraph hereof, but shall from time to time allot the same to the under-produced and under-run wells. If and when the under-run and under-produced condition shall be eliminated in the field, the Umpire shall immediately report the fact to the Commission for its further action and allotment of such market.

Jurisdiction of this cause and of the said petition is hereby retained for the purpose of making such further additional or different orders, rules and regulations as may from time to time appear to be proper, and any interested party may at any time apply to the Commission for any such order, rules and regulations."

The Commission further finds from the foregoing verified applications, and from the reports of the Umpire that the pipe line demands based upon the average takings over the past ten days are in excess of 200,000 barrels per day;

That the allowable production, at 6 per cent of potential, under Order No. 5486, would be 1,340,588 barrels, from 7 o'clock A. M. June 27th, 1931, to July 1st, 1931, at 7 o'clock A. M., both inclusive;

That the balance of the June allowable which cannot be produced during the month of June is 200,000 barrels, and that there will be in addition thereto tank bottoms, working stock and June 30th production, not available for running in June, of 700,000 barrels, or 900,000 barrels, deductable from the foregoing figure of 1,340,588 barrels, or a net of 440,588 barrels, from 7 o'clock A. M. June 27th, 1931, to July 1st, 1931, 7 o'clock A. M., or an average daily production of 110,147 barrels for this period;

That there is an average daily pipe line requirement, estimated, for the remainder of June, 1931, of 200,000 barrels, or a daily average shortage, of fulfilling the market demands, of 89,853 barrels;

[fol. 176] That the Commission's estimated potential of the Oklahoma City field for the remainder of the month of June 1931, is 2,539,059 barrels per day;

That it will require at least 4 percent increase on the Commission's estimated potential of the Oklahoma City field to supply the additional market demand.

Wherefore, premises considered, and the Commission being advised, it is therefore ordered that effective 7 o'clock A. M. June 27th, 1931 and continuing until 7 o'clock A. M. July 1st, 1931, and/or until further order of this Commission, all wells in the Oklahoma City Field not now illegally overproduced, shall be permitted to produce 10 percent of their potential production as determined by the Umpire, under the orders of this Commission, less any permitted overproduction.

It is further ordered that the producers and purchasers in the Oklahoma City field shall immediately be notified and in such expeditious manner as to give all parties opportunity to take advantage of this Order on this date.

It is further ordered that except as modified herein, the Commission's Order No. 5486 shall remain in full force and effect.

Done at Oklahoma City, Oklahoma, State Capitol Building, the day and date first mentioned herein.

Corporation Commission of Oklahoma. (Signed) Paul A. Walker, Chairman. —— ——, Commissioner. (Signed) E. R. Hughes, Commissioner.

Attest: (Signed) E. D. Hicks, Jr., Secretary.

[fol. 177] No. 5549, dated June 29th, 1931, which reads as follows:

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause No. 10326. Order No. 5549

In the Matter of the Application of WIRT FRANKLIN for Rules and Regulations to be Established by the Commission to Prevent Waste of Petroleum in Producing Oil Fields of Oklahoma

Application of OTTO B. BRADFORD for Modification of the Rules and Regulations and to Determine the Potential and Market Outlet of the Oklahoma City Field

In Re: The Matter of the Supplemental Application of Operators' Committee of Oklahoma City Field for the Modification of Order No. 5414 and Journal Entry No. 1880, Relative to the Taking of Potentials and Extending of Potential Period Beginning at 7:00 o'clock A. M. July 1st, 1931, and Ending at 7:00 o'clock A. M. October 1st, 1931

FINDINGS OF FACT AND ORDER

This cause coming on to be heard this 29th day of June, 1931, on application of Otto B. Bradford, Umpire of the Oklahoma City field, to ascertain the potential of said field and determine the market outlet from said field, which application was heard by this Commission on the 28th day of May, 1931, and continued by this Commission for further hearing to 10:00 o'clock A. M. June 29th, 1931; and upon the supplemental application of the Operators' Committee of the Oklahoma City Field, for the purpose of extending the potential period which expires at 7:00 o'clock

A. M. July 1st, 1931, to 7:00 o'clock A. M. October 1st, 1931; and for omitting the taking of potentials during the remainder of said potential period;

And notice of these hearings having been given in a newspaper of general circulation and also either by personal service or by mailing; and the testimony of numerous witnesses having been taken under oath and exhibits showing the potential production of the field, actual production, overage and underage in production and the market outlet for the months of July, August and September having been introduced in evidence, as well as statements under oath as to the probable takings and purchases from the Oklahoma City Field during the months of July, August and September, 1931;

And the Commission being fully advised in the premises, finds:

[fol. 178] (1) That the conditions of production in the Oklahoma Field, and in excess of reasonable market demand, and imminent probable waste existent when Orders Nos. 5369, 5414, 5437, 5468 and 5486 were issued, still continue, and require the making of proper orders herein to prevent such waste, promote conservation of oil and regulate the equitable, fair and proportional taking thereof, as provided by the statutes of this State.

(2) That the daily potential production of the Oklahoma City Field during the month of July, as nearly as practicable of ascertainment, is 2,678,679 barrels; that the probable market outlet for the entire Oklahoma City Field for the month of July, as nearly as practicable of ascertainment, is 203,170 barrels; and that the allowable for the wells in the Oklahoma City Field for the month of July should therefore be that percentage which this market demand bears to the potential or, for practical purposes, 8 per cent of the potential of the wells, which potential is arrived at, as provided in prior orders, by multiplying the four hour gauge by six and dividing by three.

(3) That the daily potential production of the Oklahoma City Field during the month of August, as nearly as practicable of ascertainment, is 2,790,871 barrels; that the probable market outlet for the Oklahoma City Field for the month of August, as nearly as practicable of ascertainment, will be 196,000 barrels; that the allowable for the wells in the Oklahoma City Field for the month of August

should therefore be that percentage which the market demand bears to the potential or, for practical purposes, 7 per cent of the potential of the wells, which potential and percentage are arrived at in the manner heretofore set out in the foregoing paragraph.

(4) That the daily potential production for the Oklahoma City Field during the month of September, as nearly as practicable of ascertainment, will be 3,222,582 barrels; and that the probable market outlet for the entire Oklahoma City Field for the month of September, as nearly as practicable of ascertainment, will be approximately 182,000 barrels; and that the allowable for the wells in the Oklahoma City Field for the month of September should therefore be that percentage which the probable market demand [fol. 179] bears to the potential or, for practical purposes, 6 per cent of the potential of the wells, which potential and percentage are arrived at in the manner herein set out in the foregoing paragraph (2).

(5) That there has been no material decrease in the potential of the wells in the Oklahoma City Field generally, although this does not apply to to all of the wells in the Field, since the potentials have been taken, on and subsequent to April 1st, 1931; that the postponement of the taking of the potentials, as prayed for herein, until on or after October 1st, 1931, may be permitted for the reason that operating expenses in the Field would be reduced thereby and considerable waste of natural gas would be prevented thereby and the order herein can be so drawn that injustice will not result therefrom.

(6) That the determination of the applications of Wirt Franklin for the increase of allowable of certain wells in the Oklahoma City Field and of the Indian Territory Illuminating Oil Company for increase of allowable of certain wells in the Oklahoma City Field, may be further held in abeyance, pending further consideration thereof.

Order

Wherefore, premises considered, it is therefore ordered:

1

That Order No. 5486 and all other existing orders of this Commission relating to the production of crude pe-

troleum and natural gas in the Oklahoma City Field, as modified by any subsequent orders and as modified hereby, are hereby continued in full force and effect until further order of this Commission.

2

That beginning at 7 o'clock A. M. July 1st, 1931, and ending at 7 o'clock A. M. August 1st, 1931, all wells in the Oklahoma City Field, not illegally over-produced and which have served the sixty-five day shut in period, be permitted to produce 8 per cent of their potential production, as determined in accordance with the findings herein, estimated by the Umpire in the Oklahoma City Field, under the orders of this Commission, less any permitted over-production.

[fol. 180]

3

That beginning at 7 o'clock A. M. August 1st, 1931, and ending at 7 o'clock A. M. September 1st, 1931, all wells in the Oklahoma City Field, not illegally over-produced, and which have served their sixty-five day shut in period, shall be permitted to produce 7 per cent of their potential production, as determined in accordance with the findings herein, estimated by the Umpire in the Oklahoma City Field, under the orders of this Commission, less any permitted over-production.

4

That beginning at 7 o'clock A. M. September 1st, 1931, and ending at 7 o'clock A. M. October 1st, 1931, all wells in the Oklahoma City Field, not illegally over-produced, and which have served their sixty-five day shut in period, be permitted to produce 6 per cent of their potential production, as determined in accordance with the findings herein, estimated by the Umpire in the Oklahoma City Field, under the orders of this Commission, less any permitted over-production.

5

That wells designated as "illegally over-produced," or wells which are over-produced in violation of the orders

of this Commission, shall remain shut in until such over-production is made up and such wells are again "even."

6

That the Umpire shall permit to be supplied any reasonable market demand over and above the probable market demand, or demands, ascertained herein, to take care of the percentage of production as provided in the preceding paragraphs hereof, but shall, from time to time, allot the same to the under-produced and under-run wells, so long as there may be under-produced and under-run wells, and such allotment is practicable.

Whenever there is a market demand in the Oklahoma City Field in excess of the allotments herein made in the foregoing paragraphs hereof, and when the under-run and under-produced wells shall have been taken care of so far as practicable, this fact shall immediately be reported to [fol. 181] the Commission for its further action and for the further allotment of the production in the Field for the supplying of such additional market demand.

7

The potential period commencing at 7 o'clock A. M. April 1st, 1931, and ending at 7 o'clock A. M. July 1st, 1931, is hereby extended to include the period from 7 o'clock A. M. April 1st, 1931, to 7 o'clock A. M. October 1st, 1931, and the potentials heretofore taken during the potential period beginning at 7 o'clock A. M. April 1st, 1931, shall apply during the potential period as extended to 7 o'clock A. M. October 1st, 1931: Provided that if the potential last taken of any well in the Oklahoma City Field does not reflect the true potential of such well, the owner or operator therefor may, upon application filed with this Commission not later than July 5th, 1931, and upon permission of this Commission, take a new potential of said well and apply such potential as a potential of such well during the period 7 o'clock A. M. July 1st, 1931, to 7 o'clock A. M. October 1st, 1931; provided that the taking of such new potentials shall be in accordance with the rules and regulations of this Commission governing the taking of potentials in the Oklahoma City Field, which rules and regulations, in accordance with the announcement of the Commission

at the hearing, requires such wells to be kept shut in from 7 o'clock A. M. July 1st, 1931, until the opening of such wells for the purpose of taking the new potentials.

8

Jurisdiction of this Cause, and of the subject matter hereof, and of the petition or petitions herein, and of the parties hereto, are hereby retained for the purpose of making such further, additional, or different orders, rules and/or regulations, as may from time to time appear to be proper; and any interested party, may, at any time, apply to this Commission for any further orders, rules, and/or regulations, as may be deemed necessary or proper.

[fol. 182] By the commission it is so ordered.

Done at the office of the Commission, State Capitol, Oklahoma City, Oklahoma, this the 30th day of June, 1931.

Corporation Commission of Oklahoma. Paul A. Walker, Chairman. —— ——, Commissioner. E. R. Hughes, Commissioner.

Attest: E. D. Hicks, Jr., Secy. (Seal.)

[fol. 183] That the Corporation Commission entered its Journal Entry No. 1795, dated July 8th, 1930, as follows:

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause No. 10146

In the Matter of the Appointment of an Umpire and Agent for the Enforcement of the Rules, Regulations and Requirements of the Commission's Order No. 5189 and the Designation and Appointment of Various Committees of Operators in the Fields and Pools Embraced Within the Terms and Provisions of Said Order No. 5189.

JOURNAL ENTRY No. 1795

On the 30th day of June, 1930, the Corporation Commission of the State of Oklahoma made and promulgated its Order No. 5189 fixing and establishing rules and regula-

tions to prevent the waste of crude oil and petroleum and the by-products thereof in the following fields, to-wit: Oklahoma City, East Earlsboro, South Earlsboro, Marshall-Lovell, Allen Dome, Sasakwa, Konawa, St. Louis, West Asher-Wanette, Chandler, West Perry, Orlando and Township 20 N. Range 4 West, as well as all pools in the Greater Seminole Area, of Seminole County, Oklahoma, and other producing area that may come into production during the months of July, August, and September, 1930, within the State of Oklahoma.

In order to carry into effect the terms and provisions of said Order No. 5189 and to enforce the rules, regulations and requirements therein contained, as well as the statute relating thereto, it is necessary for the designated and appointment of an Umpire or agent for that purpose. At said hearing and prior conferences of the operators affected, it was the sense of the operators that Ray M. Collins should be designated as Umpire and Agent of the Commission to enforce said rules and regulations, with authority to employ other assistants in case that mey be deemed to be necessary. It is also considered and recommended that a Committee representing each of the pools designated in said order, should be selected and appointed as agents of the Corporation Commission to assist the Umpire in the matter of the enforcement of the rules and regulations prescribed; the committees suggested and designated being as follows, to-wit:

Allen pool: R. A. Griffith, Sinclair; C. H. Wright, Sunray; Geo. Moody, Mid-Continent.

Lovell (Logan Co.) pool: H. D. Aggers, Wentz; Glenn Haroun, Sinclair; Mr. Bond, Shell; Mr. Churdh, J. E. Crosbie, et al.

Greater Seminole (and East and South Earlsboro and Knoawa): J. S. Sidwell, Prairie; J. J. Conry, Carter; R. F. McArthur, Barnsdall; Kenneth-Winship, Gypsy; L. C. Hawkins, Magnolia.

Oklahoma City pool: M. J. Kirwan, I. T. I. O.; J. S. Sidwell, Prairie; Wirt Franklin, Cromwell-Franklin; Ralph Roark, Shell; Glenn Haroun, Sinclair.

[fol. 184] West Asher-Wanette: Ralph Roark, Shell; J. S. Sidwell, Prairie; M. J. Kirwan, I. T. I. O.

Now on this the 8 day of July, 1939, the Commission having the matter of the designation and appointment of an

Umpire and agent to enforce the rules, regulations and requirements contained in said Order No. 5189 as well as the designation of a Committee of Operators in each of said pools, is of the opinion and finds:

First. That Ray M. Collins should be designated and appointed as Umpire and Agent for the purpose of enforcing the rules, regulations and requirements set forth, promulgated and contained in said Order No. 5189 with authority to employ such additional assistants as shall be necessary to that end.

Second. The Commission further finds that the Operators Committee as recommended and suggested by the operators should be selected and designated for each of said pools to aid and assist the Umpire in administering the rules and regulations for each of said respective pools.

It is therefore the order of the Commission, premises considered, that Ray M. Collins be and he is hereby appointed, subject to the approval of His Excellency Governor W. J. Holloway as Umpire and Agent of the Corporation Commission for the purpose of enforcing rules, regulations and requirements contained in Order No. 5189 looking to the proration and conservation of crude oil and petroleum products produced and which may be produced from the fields set forth in said Order.

It is the further order of the Commission that said Ray M. Collins, Umpire, be and he is hereby authorized to employ and select as many assistants as may be necessary to carry into full effect the Order of the Commission.

It is the further order of the Commission, premises considered, that for the purpose of assisting the Umpire and Agent designated herein in administering the rules, regulations and requirements contained in said Order No. 5189, the following Committees of Operators be and they are hereby designated and appointed as agents of the Corporation Commission, subject to the approval of his Excellency Governor W. J. Holloway, to-wit:

Allen pool: R. A. Griffith, Sinclair; C. H. Wright, Sunray; Geo. Moody, Mid-Continent.

Lovell (Logan Co.) pool: H. D. Aggers, Wentz; Glenn Haroun, Sinclair; Mr. Bond, Shell; Mr. Church, J. E. Crosbie, et al.

Greater Seminole (and East and So. Earlsboro and Konawa): J. S. Sidwell, Prairie; J. J. Conry, Carter; R. F. McArthur, Barnsdall; Kenneth-Winship, Gypsy; L. C. Hawkins, Magnolia.

Oklahoma City pool: M. J. Kirwan, I. T. I. O.; J. S. Sidwell, Prairie; Wirt Franklin, Cromwell-Franklin; Ralph Roark, Shell; Glenn Haroun, Sinclair.

[fol. 185] West Asher-Wanette: Ralph Roark, Shell; J. S. Sidwell, Prairie; M. J. Kirwan, I. T. I. O.

Done at Oklahoma City this the 8 day of July, 1930.

Corporation Commission of Oklahoma. (Signed) C. C. Childers, Chairman. (Signed) Fred Capshaw, Commissioner. (Signed) E. R. Hughes, Commissioner.

Attest: (Signed) E. D. Hicks, Jr., Secy. (Seal.)

I, W. J. Holloway, Governor of the State of Oklahoma, do hereby consent and approve of the appointment and designation of Ray M. Collins as Umpire and Agent for the enforcement of the rules, regulations and requirements of the Corporation Commission looking to the conservation of crude oil and petroleum products and contained in Order No. 5189, and do hereby consent and approve the appointment of a Committee of Operators set forth and contained in the above Journal Entry for the purpose of assisting in the enforcement of said rules and regulations in their respective fields.

(Signed) W. J. Holloway, Governor of the State of Oklahoma.

[fol. 186] And entered its Journal Entry No. 1822, dated Nov. 3rd, 1930, as follows:

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause No. 10326

In the Matter of the Application of WIRT FRANKLIN for Rules and Regulations to be Established by the Corporation Commission to Prevent Waste of Petroleum in the Producing Oil Fields of the State of Oklahoma.

JOURNAL ENTRY No. 1822

On the 28th day of October, 1930, the Corporation Commission of the State of Oklahoma, made and promulgated

its Order No. 5369, fixed and established rules and regulations to prevent the waste of crude oil and petroleum and the by-products thereof, for all of the oil producing areas in the State of Oklahoma, together with those new sands or areas which may be brought into production during the months of October, November and December, 1930.

In order to carry into effect the terms and provisions of said Order No. 5369 and to enforce the rules, regulations and requirements therein contained, as well as the statute relating thereto, it is necessary for the designation and appointment of an Umpire or agent for that purpose. At said hearing and prior conferences of the operators affected, it was the sense of the operators that Ray M. Collins should be designated as Umpire and Agent of the Commission, and that Otto Bradford should be appointed his Special Assistant, to enforce said rules and regulations, with authority to employ other assistants in case that may be deemed to be necessary. It is also considered and recommended that a Committee representing each of the pools designated in said Order, should be selected and appointed as agents of the Corporation Commission to assist the Umpire in the matter of the enforcement of the rules and regulations prescribed; the committees suggested and designated being as follows, to-wit:

Class "A" wells: Chas. Jacobson, J. B. Steele, Ralph Roark, R. H. Huey, H. N. Pardue.

Southern Oklahoma fields: Sam Embrey, Knox Carvin, F. M. Porter, Pete Shaner, H. B. Fell, Joe Ray, Clifford Mooers, J. B. Cowden, Geo. Pace.

Allen pool: H. B. Smith, Sinclair; C. H. Wright, Sunray; Geo. Moody, Mid-Continent.

Lovell (Logan Co.) pool: H. D. Aggers, Wentz; Glenn Haroun, Sinclair; Mr. Bond, Shell; Mr. Church, J. E. Crosbie, et al.

Greater Seminole (And East and South Earlsboro and Konawa): J. S. Sidwell, Prairie; J. J. Conry, Carter; R. F. McArthur, Barnsdall; Kenneth-Winship, Gypsy; L. C. Hawkins, Magnolia.

[fol. 187] Oklahoma City Pool: M. J. Kirwan, I. T. I. O. Co.; Wirt Franklin, Cromwell-Franklin; J. S. Sidwell, Prairie; Ralph Roark, Shell; Glenn Haroun, Sinclair.

West Asher-Wanette: Ralph Roark, Shell; J. S. Sidwell, Prairie; M. J. Kirwan, I. T. I. O. Co.

Now on this the 3rd day of November, 1930, the Commission having the matter of the designation and appointment of an Umpire and Agent to enforce the rules, regulations and requirements contained in said Order No. 5369 as well as the designation of a Committee of Operators in each of said pools, is of the opinion and finds:

First. That Ray M. Collins should be designated and appointed as Umpire and Agent for the purpose of enforcing the rules and regulations and requirements set forth, promulgated and contained in said Order No. 5369 with authority to employ such additional assistants as shall be necessary to that end, and that Otto Bradford should be designated as special assistant to the said Ray M. Collins.

Second. The Commission further finds that the Operators Committees as recommended and suggested by the operators should be selected and designated for each of said pools to aid and assist the Umpire in administrating the rules and regulations for each of said respective pools.

It is therefore the order of the Commission, premises considered, that Ray M. Collins be and he is hereby appointed, subject to the approval of His Excellency Governor W. J. Holloway as Umpire and Agent of the Corporation Commission for the purpose of enforcing rules, regulations and requirements contained in Order No. 5369 looking to the proration and conservation of crude oil and petroleum products produced and which may be produced from the fields set forth in said Order, and that Otto Bradford be and he is hereby, with the consent and approval of His Excellency Governor W. J. Holloway, appointed Special Assistant Umpire to the said Ray M. Collins.

It is the further order of the Commission that said Ray M. Collins, Umpire, be and he is hereby authorized to employ and select as many other assistants as may be necessary to carry into full effect the Order of the Commission.

It is the further order of the Commission, premises considered, that for the purpose of assisting the Umpire and Agent designated herein in administering the rules and regulations and requirements contained in said Order No. 5369, the following Committees of Operators be and they

are hereby designated and appointed as Agents of the Corporation Commission, subject to the approval of His Excellency Governor W. J. Holloway, to-wit:

Class "A" wells: Chas. Jacobson, J. B. Steele, Ralph Roark, R. H. Huey, H. H. Pardue.

Southern Oklahoma fields: Sam Embrey, Knox Carvin, F. M. Porter, Pete Shaner, H. B. Fell, Joe Ray, Clifford Mooers, J. B. Cowden, Geo. Pace.

Allen pool: H. B. Smith, Sinclair; C. H. Wright, Sunray; Geo. Moody, Mid-Continent.

[fol. 188] Lovell (Logan Co.) pool: H. D. Aggers, Wentz; Glenn Haroun, Sinclair; Mr. Bond, Shell; Mr. Church, J. E. Crosbie, et al.

Greater Seminole (And East and South Earlsboro and Konawa): J. S. Sidwell, Prairie; J. J. Conry, Carter; R. F. McArthur, Barnsdall; Kenneth-Winship, Gypsy; L. C. Hawkins, Magnolia.

Oklahoma City pool: M. J. Kirwan, I. T. I. O. Co.; J. S. Sidwell, Prairie; Wirt. Franklin, Cromwell-Franklin; Ralph Roark, Shell; Glenn Haroun, Sinclair.

West Asher-Wanette: Ralph Roark, Shell; J. S. Sidwell, Prairie; M. J. Kirwan, I. T. I. O. Co.

Done at Oklahoma City this the 3rd day of November, 1930.

Corporation Commission of Oklahoma. (Signed) C. C. Childers, Chairman. (Signed) Fred Capshaw, Commissioner. (Signed) E. R. Hughes, Commissioner.

Attest: (Signed) E. D. Hicks, Jr., Secretary. (Seal.)

I, W. J. Holloway, Governor of the State of Oklahoma, do hereby consent and approve of the appointment and designation of Ray M. Collins as Umpire and Agent, and Otto Bradford as Special Assistant Umpire, for the enforcement of the rules, regulations and requirements of the Corporation Commission looking to the conservation of crude oil and petroleum products and contained in Order No. 5369, and do hereby consent and approve the appointment of a Committee of Operators set forth and contained in the above Journal Entry for the purpose of assisting

in the enforcement of said rules and regulations in their respective fields.

(Signed) W. J. Holloway, Governor of the State of Oklahoma.

[fol. 189] And entered its Journal Entry No. 1835, dated January 9th, 1931, as follows:

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause No. 10326

In the Matter of the Application of WIRT FRANKLIN for Rules and Regulations to be Established by the Corporation Commission to Prevent Waste of Petroleum in the Producing Oil Fields of the State of Oklahoma

JOURNAL ENTRY No. 1835

On the 28th day of October, 1930, the Corporation Commission of the State of Oklahoma, made and promulgated its Order No. 5413, fixed and established rules and regulations to prevent the waste of crude oil and petroleum and the by-products thereof, for all of the oil producing areas in the State of Oklahoma, together with those new sands or areas which may be brought into production during the months of October, November and December, 1930.

In order to carry into effect the terms and provisions of said Order No. 5413 and to enforce the rules, regulations and requirements therein contained, as well as the statute relating thereto, it is necessary for the designation and appointment of an Umpire or agent for that purpose. At said hearing and prior conferences of the operators affected, it was the sense of the operators that Ray M. Collins should be designated at Umpire and Agent of the Commission, and that Otto Bradford should be appointed his Special Assistant, to enforce said rules and regulations, with authority to employ other assistants in case that may be deemed to be necessary. It is also considered and recommended that a Committee representing each of the pools designated in said Order, should be selected and appointed as agents of the Corporation Commission to assist the Umpire in the matter of the enforcement of the rules and

regulations prescribed; the committees suggested and designated being as follows, to-wit:

Class "A" wells: Chas. Jacobson, J. B. Steele, Ralph Roark, R. H. Huey, H. N. Pardue.

Southern Oklahoma fields: Sam Embrey, Knox Garvin, F. M. Porter, Pete Shaner, H. B. Fell, Joe Ray, Clifford Mooers, J. B. Cowden, Geo. Pace.

Allen pool: H. B. Smith, Sinclair; C. H. Wright, Sunray; Geo. Moody, Mid-Continent.

Lovell (Logan Co.) pool: H. D. Aggers, Wentz; Glenn Haroun, Sinclair; Mr. Bond, Shell; Mr. Church, J. E. Crosbie, et al.

Greater Seminole (and East and South Earlsboro and Konawa): J. B. Sidwell, Prairie; J. J. Conry, Carter; R. F. MacArthur, Barnsdall; Kenneth-Winship, Gypsy; L. C. Hawkins, Magnolia.

[fol. 190] Oklahoma City pool: M. J. Kirwan, I. T. I. O. Co.; J. S. Sidwell, Prairie; Wirt Franklin, Cromwell-Franklin; Ralph Roark, Shell; Glenn Haroun, Sinclair.

West Asher-Wanette: Ralph Roark, Shell; J. S. Sidwell, Prairie; M. J. Kirwan, I. T. I. O. Co.

Now on this the 9th day of January, 1931, the Commission having the matter of the designation and appointment of an Umpire and Agent to enforce the rules, regulations and requirements contained in said Order No. 5413, as well as the designation of a Committee of Operators in each of said pools, is of the opinion and finds:

First. That Ray M. Collins should be designated and appointed as Umpire and Agent for the purpose of enforcing the rules and regulations and requirements set forth, promulgated and contained in said Order No. 5413, with authority to employ such additional assistants as shall be necessary to that end, and that Otto Bradford should be designated as special assistant to the said Ray M. Collins.

Second. The Commission further finds that the Operators' Committees as recommended and suggested by the operators should be selected and designated for each of said pools to aid and assist the Umpire in administering the rules and regulations for each of said respective pools.

It is therefore the order of the Commission, premises considered, that Ray M. Collins be and he is hereby appointed, subject to the approval of His Excellency Governor W. J. Holloway, as Umpire and Agent of the Corporation Commission for the purpose of enforcing rules, regulations and requirements contained in Order No. 5413 looking to the proration and conservation of crude oil and petroleum products produced and which may be produced from the fields set forth in said Order, and that Otto Bradford be and he is hereby, with the consent and approval of His Excellency Governor W. J. Holloway, appointed Special Assistant Umpire to the said Ray M. Collins.

It is the further order of the Commission that said Ray M. Collins, Umpire, be and he is hereby authorized to employ and select as many other assistants as may be necessary to carry into full effect the order of the Commission.

It is the further order of the Commission, premises considered, that for the purpose of assisting the Umpire and Agent designated herein in administering the rules and regulations and requirements contained in said Order No. 5413, the following Committees of Operators be and they are hereby designated and appointed as Agents of the Corporation Commission, subject to the approval of His Excellency Governor W. J. Holloway, to-wit:

Class "A" wells: Chas. Jacobson, J. B. Steele, Ralph Roark, R. H. Huey, H. N. Pardue.

Southern Oklahoma fields: Sam Embrey, Knox Garvin, [fol. 191] H. B. Fell, Joe Ray, F. M. Porter, Pete Shaner, Clifford Mooers, J. B. Cowden, Geo. L. Pace.

Allen pool: H. B. Smith, Sinclair; C. H. Wright, Sunray; Geo. Moody, Mid-Continent.

Lovell (Logan Co.) pool: H. D. Aggers, Wentz; Glenn Haroun, Sinclair; Mr. Bond, Shell; Mr. Church, J. E. Crosbie, et al.

Greater Seminole (and East and South Earlsboro and Konawa): J. S. Sidwell, Prairie; J. J. Conry, Carter; R. F. MacArthur, Barnsdall; Kenneth-Winship, Gypsy; L. C. Hawkins, Magnolia.

Oklahoma City pool: M. J. Kirwin, I. T. I. O. Co.; J. S. Sidwell, Prairie; Wirt Franklin, Cromwell-Franklin; Ralph Roark, Shell; Glenn Haroun, Sinclair.

West Asher-Wanette: Ralph Roark, Shell; J. S. Sidwell, Prairie; M. J. Kirwan, I. T. I. O. Co.

Done at Oklahoma City, Oklahoma, this the 9 day of January, 1931.

Corporation Commission of Oklahoma. —— ——, Chairman. (Signed) Fred Capshaw, Commissioner. (Signed) E. R. Hughes, Commissioner.

Attest: (Signed) E. D. Graham, Acting Secretary.

I, W. J. Holloway, Governor of the State of Oklahoma, do hereby consent and approve of the appointment and designation of Ray M. Collins as Umpire and Agent, and Otto Bradford as Special Assistant Umpire, for the enforcement of the rules, regulations and requirements of the Corporation Commission looking to the conservation of crude oil and petroleum products and contained in Order No. 5413, and do hereby consent and approve the appointment of a Committee of Operators set forth and contained in the above Journal Entry for the purpose of assisting in the enforcement of said rules and regulations in their respective fields.

(Signed) W. J. Holloway, Governor of the State of Oklahoma.

[fol. 192] And entered its Journal Entry No. 1856, dated March 5th, 1931, as follows:

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause No. 10326

In re: Allowable Takings of Crude Petroleum in the Oklahoma City Field

JOURNAL ENTRY No. 1856

Be it remembered, That on this the 5th day of March, 1931, the Commission having had under consideration the application of Wirt Franklin, et al., for increased allowable takings from the Oklahoma City Field, and announcement made by the Commission in connection therewith from the bench at the conclusion of its hearing on March 4, 1931; And the Commission having before it the request of the

Governor of Oklahoma in connection therewith, which is in words and figures as follows, to-wit:

"On yesterday you made an order increasing the flow of oil and placing a construction on the order heretefore made as to allowing only two-thirds of the field's allowable to be produced. Personally, I do not believe that the order was the direct cause for reduction of the price but used as an excuse. I believe that the intention was to do so by certain big companies as soon as Congress adjourned. Therefore, I would ask the Commission to reverse the order placing the Oklahoma City field back where it was prior to your order of yesterday and then that everything relative to oil, both before the Commission and before the Legislature be held in abeyance until after the meeting to be held in Texarkana, Arkansas, on Monday, March 9th.

"It is my hope that at this conference there can be a plan worked out that will reach the situation.

"The sacrifice that must needs be made by the Independent Producers should be matched by the importers in like sacrifice in importing oil. In other words, we should remove all excuse for reduction on the part of the State."

And the Commission being further advised, finds: That the request for staying action on the matter of increasing the allowable takings from the Oklahoma City Field should be granted and that action contemplating increased allowable takings should be delayed and held in abeyance until after the foregoing meeting of the several states' representatives in Texarkana, Arkansas, on March 9, 1931, and until such time as the Commission may find it advisable to act thereon.

It is, therefore, ordered that the announcement of March 4, 1931, increasing the allowable takings in the Oklahoma City Field, be and the same is hereby revoked and held in abeyance until further order of this Commission.

It is further ordered that that part of the announcement specifically construing runs from even wells from the Oklahoma City Field for dates prior to March 1, 1931, is hereby rescinded and that the order pertaining to runs from even wells shall be construed only as permitting the full amount of runs from even wells from, on and after [fol. 193] March 1, 1931; and that Order No. 5437 as con-

strued herein, be and remain in full force and effect until further order of this Commission.

Done at the office of the Corporation Commission, State Capitol, Oklahoma City, Oklahoma, the day and date first above mentioned herein.

Corporation Commission of Oklahoma. (Signed) Paul A. Walker, Chairman. (Signed) C. C. Childers, Commissioner. (Signed) E. R. Hughes, Commissioner.

Attest: (Signed) E. D. Hicks, Jr., Secretary.

[fol. 194] And entered its Journal Entry No. 1864, dated March 17th, 1931, as follows:

EXHIBIT "I"

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause No. 10326

In the Matter of Rules and Regulations for the Prevention of Waste of Crude Petroleum, Etc., in the State of Oklahoma, Including the Application of Wirt Franklin et al. for an Increase in the Allowable Takings from the Oklahoma City Field and for a Realignment of the Allowable Takings from the Various Oil Fields of the State

JOURNAL ENTRY No. 1864

Be it remembered that, the Commission being in session, had before it the request of Cicero I. Murray for a postponement of the hearing formerly announced herein for March 25th, and for a continuation of the Commission's orders, for the enforcement of conservation and the prevention of waste of crude petroleum, in the State of Oklahoma.

The Commission is formally advised that Cicero I. Murray is, by the Governor, designated as a representative of the State of Oklahoma on the Committee known as the "Oil States Advisory Committee", and that this Committee is attempting to work out among the State of Arkansas, California, Kansas, Oklahoma, Texas Wyoming, and the other

oil producing States, and the Federal Government, a definite working plan for the conservation of crude petroleum and for other recommendations. There is now set before the Railroad Commission of the State of Texas at Austin on March 24th, a hearing looking to the matter of the proration in the East Texas fields, and on March 30th, 1931, a conference of the "Oil States Advisory Committee" at Washington, D. C.

Formal request is made that matters in Oklahoma be held in abeyance pending the Texas hearing and the March 30th Washington Conference, and that the orders heretofore made by the Commission be held in full force and effect pending the outcome of these matters.

It further appears that this Commission has heretofore ordered new potentials to be taken in various of the fields of the State as a basis for the further consideration of the proration orders now in effect and of any future orders covering the same subject matter. It appears from the reports of the Commission's Umpire that the taking of said potentials has not been completed and will not be completed by March 25th, the date heretofore set by the Commission for the further hearing of this Cause, and that the additional facts to be developed by the matters hereinbefore referred to and which will not be fully available on March 25th, will be of great value to the Commission in reaching a final determination as to the matters involved.

The Commission therefore being advised, finds that the hearing heretofore announced for March 25th, 1931, should be postponed and that the orders heretofore made and now in force, concerning conservation of crude petroleum and the equitable taking thereof from the Oklahoma Fields, should be held in full force and effect pending the aforesaid hearing and conference and negotiations now under way among the representatives of the several oil producing States, and until further orders of this Commission.

Wherefore, premises considered, it is ordered that this Commission's Orders Nos. 5413, 5414, 5437 and Journal Entry No. 1856, dated March 5th, 1931, construing said Orders, and all prior orders of this Commission dealing with conservation and equitable taking of crude petroleum, except as modified by the aforesaid orders, be and the same are hereby continued in full force and effect, until further order of this Commission.

It is further ordered that from and after April 1st, 1931, no producer in the Oklahoma City Field shall be permitted [fol. 195] to produce any oil from any well until after having taken a potential of said well on or after April 1st, 1931, as provided in the orders now in force, except such oil as may be produced in the actual taking of such potential.

Done at the office of the Corporation Commission, State Capitol, Oklahoma City, Oklahoma, this 17th day of March, 1931.

Corporation Commission of Oklahoma. (Signed) Paul A. Walker, Chairman. (Signed C. C. Childers, Commissioner. (Signed) E. R. Hughes, Commissioner.

Attest: (Signed) E. D. Hicks, Jr., Secretary. Seal.

[fol. 196] And entered its Journal Entry No. 1876, dated April 10th, 1931, as follows:

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause No. 10326

In the Matter of the Allowable Takings of Crude Petroleum in the Oklahoma City Field

JOURNAL ENTRY No. 1876

Be it remembered that on this the 10th day of April, 1931, the Commission being in session, had under consideration the interpretation of its Order No. 5437 as pertains to the allowable flow from even wells; by even wells are meant wells which have produced the oil which they are entitled to produce under the Commission's Orders but which are not overproduced.

Sub-paragraph 2 of paragraph 6 of this Commission's Order No. 5414 of date of December 30th, 1930, reads: "Wells which are even shall be allowed to produce only ⅔ of their allowable production as fixed in the general order this day issued."

On February 10th, 1931, this Commission made its Order No. 5437, under consideration herein. Paragraphs 1 and 2 of said Order provide:

"1. That Orders Nos. 5413 and 5414 made and entered on December 30, 1930, be and the same are hereby modified and supplemented insofar as they affect what is known as the Oklahoma City Oil field, and that the potential production of said field be and the same is hereby determined to be approximately 2,000,000 barrels of crude oil per day.

2. That the amount of allowable production from said Oklahoma City oil field be and the same is hereby increased from the allowable heretofore determined, to 125,000 barrels per day, or 6¼ per cent of the potential production of 2,000,000 barrels per day as herein determined."

Paragraph 5 of said Order No. 5437, provides that the allowable from each well shall be 6¼ per cent of the potential production arrived at and determined by the method therein prescribed.

Paragraph 8 of said Order No. 5437 provides:

" ' That the terms and provisions of Order No. 5413, and other orders heretofore made and entered, and now in effect, except as modified herein, shall remain in full force and effect."

On March 5th, 1931, this Commission entered its Journal Entry No. 1856 which provides, in part:

"It is further ordered that that part of the announcement specifically construing runs from even wells from the Oklahoma City Field for dates prior to March 1st, 1931, is hereby rescinded and that the order pertaining to runs from even wells shall be construed only as permitting the full amount of runs from even wells from, on and after March 1, 1931; and that Order No. 5437 as construed herein, be and remain in full force and effect until further order of this Commission."

The foregoing orders have been variously interpreted as to the allowable takings from the wells in the Oklahoma City Field, resulting in inequities from unequal takings from the wells in this field. Certain operators, between dates of February 10th and March 5th, 1931, took the full 6¼ per cent from the even wells while other operators took only ⅔ thereof from their even wells.

The confusion and misunderstanding, resulting in unequal takings, because some wells were drawn upon for 6¼ per cent of their potential production while others were and are held to ⅔ thereof during the period beginning February 10th, 1931, and ending March 1st, 1931, compels the Commission to place a formal interpretation on its Orders heretofore made, respecting allowable takings from even wells.

Said Journal Entry No. 1856 of March 5th, 1931, specifically provides that Order No. 5437 is construed to mean that even wells, or wells not overproduced, shall be permitted [fol. 197] takings of the full 6¼ per cent of the potential of each well, from and after March 1st, 1931. The only remaining contention in this regard, therefore, is as to the period February 10th to March 1st, 1931. It is evident, of course, that all parties must be treated alike, otherwise there can be no proper enforcement of the conservation laws of the State or the Orders of this Commission in reference thereto.

Certain wells in the Oklahoma City Field having since February 10th, 1931 been produced at 6¼ per cent of their full allowable, as determined in the manner prescribed by this Commission's Order No. 5437, the Commission finds that all operators in the Oklahoma City Field are entitled to a similar allowable taking for their wells, and that all operators who have produced only ⅔ of the allowable from their even wells, since the date of February 10th, 1931, shall be permitted to make up the other ⅓, and the Commission's Order No. 5437 is so interpreted. Under the interpretation of the Commission's Order No. 5437 herein made, the full allowable of 6¼ per cent for even wells in the Oklahoma City Field shall be and is permitted for the period beginning February 10th, 1931.

It is therefore ordered that all operators in the Oklahoma City Field who produced only ⅔ of the 6¼ per cent of the potential production from their even wells between the dates February 10th, 1931 and March 1st, 1931, be permitted to produce from such wells an amount of oil equal to the remaining ⅓ of their allowable between these dates.

Provided, however, waste shall not be permitted in the production of this oil, and that such oil shall not be produced in excess of the market outlet therefor, and that said

Order No. 5437, is construed as meaning that from and after February 10th, 1931 and until further order of this Commission, operators in the Oklahoma City Field were, are and shall be entitled to 6¼ per cent of the potential production of each and every even well.

Provided, that the production of such under-run oil shall be after notification to the Umpire in the Oklahoma City Field of the intention to run such oil, and subject to such restrictions as it may be found necessary to impose as to the length of time in which such oil may be produced, and the days and dates on which the oil may be run.

It is further ordered that the Commission retain jurisdiction of the subject matter hereof and the parties hereto for such further order or orders as may be necessary in the premises.

Done at Oklahoma City, Oklahoma, this the 10th day of April, 1931.

Corporation Commission of Oklahoma. (Signed) Paul A. Walker, Chairman. (Signed C. C. Childers, Commissioner. (Signed) E. R. Hughes, Commissioner.

Attest: (Signed) E. D. Graham, Act. Secretary.

[fol. 198] And entered its Journal Entry No. 1880, dated April 15th, 1931, as follows:

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause No. 10,326

In re Modifying Sub-paragraph 3 of Paragraph 2, Page 3, Order #5414 in Cause #10,326, Dated December 30th, 1930

Journal Entry No. 1880

Be it remembered that on this the 15th day of April, 1931, the Commission being in session, had under consideration the interpretation of its Order No. 5414 with reference to the taking of potentials in the Oklahoma City Field, and sub-paragraph 3 of paragraph 2, page 3 Order No. 5414 in cause No. 10,326, dated December 30th, 1930, is modified and amended as follows:

When, in pursuance hereof, a well is permitted to be opened for the purpose of determining its potential, it shall be permitted to produce for four hours, to be taken continuously, whether or not the well produced continuously during such time, and to be computed from the hour and minute oil first flows into lease tankage from the oil and gas separator.

Provided, however, that in the event there is any intermediate settling tank, treating tank, device or container interposed between the separator and lease tankage, the difference in the amount of oil in such settling tank, treating tank, device or container reduced by proper correction for impurities and temperature to net oil in the beginning of the potential gauge and for hours thereafter, shall be added to or subtracted from the amount of oil as gauged in lease tankage as may be appropriate to arrive at the actual amount of oil produced during said four hour gauge.

Provided, further, that in the event a well "cuts out" or for any other mechanical reason, through no fault of the operator, it cannot be left open for four hours continuously, the owner or operator thereof shall, before again opening said well, file with the Umpire at his office in Oklahoma City a supplemental application to take the potential of said well, in the same manner as prescribed in sub-paragraphs numbered 1 and 2 of paragraph 2, page 3, Order No. 5414, and attached to and as a part of said application, there shall be affidavits of each of the witnesses and representatives present at the attempted taking of the potential, describing in detail the necessity of shutting in said well before the four hour period had expired.

If, from said supplemental application and the attached affidavits and other information available it shall be determined that the necessity of shutting in said well was due to mechanical defects not within the control of the owner or operator of said well, it may be ordered that the taking of a potential of said well again be attempted, in the same manner as prescribed in sub-paragraphs numbered 1 and 2 of paragraph 2, page 3, Order No. 5414;

Provided, further, that all oil produced during the time when the potential of a well is being determined or attempted to be determined shall be charged against the allowable of said well for the then current month.

Provided, further, that no well shall be allowed to take a potential when a four hour flow estimated on its previous potential or attempted potential will cause said well to be overproduced for the then current month. The amount of oil produced from said well during said four hour period multiplied by six shall constitute the tentative daily poten- [fol. 199] tial of said well for the current potential period, as provided in sub-paragraph 3 of paragraph 2, page 3, Order No. 5414.

It is further ordered that the Commission retain jurisdiction of the subject matter hereof and the parties hereto for such further order or orders as may be necesssary in the premises.

Done at Oklahoma City, Oklahoma, this the 15th day of April, 1931.

Corporation Commission of Oklahoma. Paul Walker, Chairman. C. C. Childers, Commissioner. —— ——, Commissioner.

Attest: E. D. Graham, Act. Secretary.

CLERK'S COPY.

Vol. II

(EXHIBITS—PART 3)

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1931

No. 485

CHAMPLIN REFINING COMPANY, APPELLANT,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA AND PAUL WALKER, E. R. HUGHES, AND C. C. CHILDERS, ETC., ET AL.

No. 486

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA AND PAUL WALKER, E. R. HUGHES, AND C. C. CHILDERS, ETC., ET AL., APPELLANTS,

vs.

CHAMPLIN REFINING COMPANY

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

FILED OCTOBER 26, 1931

(36,299, 36,300)

(36,299, 36,300)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

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APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

VOL. II

(EXHIBITS—PART 3)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 28, 1931

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[fol. 200] PLAINTIFF'S EXHIBIT 34

No. 34, Record, p. 282

That the Corporation Commission on June 27th, 1931, did receive the petition of Otto Bradford, Umpire of the Oklahoma City field, in the following form:

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause No. 10326

In re Application of WIRT FRANKLIN for Rules and Regulations to be Established by the Commission to Prevent Waste of Petroleum in the Producing Oil Fields of the State of Oklahoma

Comes now Otto B. Bradford, Umpire of the Oklahoma City field and states the following:

That by order of this Commission No. 5486 in Cause No. 10326, dated May 29th, 1931, which order is now in force and effect, all wells not illegally overproduced, were allowed to produce 6 percent of their potentials during the month of June, 1931, less any permitted overproduction; that the Umpire permit any reasonable market demand above that amount necessary to take care of the allowable percentages to be allotted to the underproduced and underrun wells.

Petitioner further shows that the underrun condition of the field has been practically alleviated and that the field is now approximately even; that a market outlet of 100,000 barrels per day in excess of the amount of oil that can be produced under the present order, beginning as of 7:00 o'clock A. M. June 27, 1931, for the remainder of the month has been secured, which additional outlet should increase the allowable of the wells not illegally overproduced by 4 percent.

That by said Order No. 5486, supra, the Commission was to be advised by the Umpire when the underrun and underproduced condition of the field was eliminated, and when any additional market outlet was secured, for the further action and allotment of such market demand.

Whereas, the daily demand of pipe line purchasers for the balance of the current month is estimated to be at least 200,000 barrels daily. An analysis of the condition of the Oklahoma City field at this time shows that there is a place to produce runs from wells entitled to produce under the terms of Order No. 5486 from 7 A. M. June 27, 1931 to 7 A. M. July 1, 1931 both inclusive, the amount of 1,340,588 barrels, that of such amount 200,000 barrels cannot be produced by reason of the fact that certain wells are dead or otherwise incapable of producing that amount of oil. Further, there is or will be approximately 700,000 barrels which cannot be produced or run due to the fact that 700,000 barrels consist of tank bottoms, working stock and oil that will be produced on June 30th, 1931 all of which will not be available to pipe line purchasers. This shows of the total amount of 1,340,588 barrels, a balance of 440,588 barrels will be available for allocation to pipe line purchasers between 7 A. M. June 27, 1931, to 7 A. M. July 1st, 1931, dates inclusive or a daily average of 110,147 barrels daily.

Whereas, the estimate daily requirements for delivery to pipe line purchasers is or will be in excess of 200,000 barrels daily. The analysis of the condition of the field reflects an average daily shortage between 7 A. M. June 27th, 1931 to July 1st, 1931, between 80,000 to 100,000 barrels daily.

Therefore, an increase in the rate of production of 4% over and above, provided for in Order No. 5486, would enable the field to produce and deliver approximately amount of 101,562 barrels daily which in effect would enable the field to fulfill the current pipe line demand during the period between 7 A. M. June 27th to 7 A. M. July 1, 1931, both inclusive.

Wherefore, premises considered, petitioner prays that [fol. 201] this Commission make and enter an order increasing the allowable of wells not illegally produced to 10 per cent of their potentials, effective as of 7:00 o'clock A. M. June 27, 1931 and to continue in full effect until 7:00 o'clock A. M. July 1, 1931.

Respectfully submitted.

Otto B. Bradford, Umpire of the Oklahoma City field, by Ralph G. Thompson, Miley, Hoffman, Williams & France, His Attorneys.

STATE OF OKLAHOMA,
County of Oklahoma, ss:

Ralph G. Thompson, of lawful age, being first duly sworn, deposes and says:

That he is associated in the law firm of Miley, Hoffman, Williams and France; that said law firm are the attorneys for Otto B. Bradford; that he has read the above and foregoing petition and is familiar with the contents thereof and the statements are true as he verily believes.

(Signed) Ralph G. Thompson.

Subscribed and sworn to before me this 27th day of June, 1931. My Commission Expires Aug. 9, 1934.
(Signed) Jane Callagy.

[fol. 202] PLAINTIFF'S EXHIBIT 35

No. 35, Record, p. 282

Corporation Commission Order #5548, reprinted as a part of Exhibit #33. (Not included here.)

[fol. 203] PLAINTIFF'S EXHIBIT 36

No. 36, Record, p. 282

Order No. 847, dated October 1st, 1914, which reads as follows:

Order No. 847. Cause No. 2041

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

vs.

MAGNOLIA PIPE LINE COMPANY, a Corporation; OKLAHOMA Pipe Line Company, a Corporation; Gulf Pipe Line Company of Oklahoma, a Corporation; The Texas Company, a Corporation, and Prairie Oil & Gas Company, a Corporation

On the 30th day of September, 1914, the Magnolia Pipe Line Company notified the Attorney General and the Cor-

poration Commission that it would reduce the price of oil in the Healdton field on October 6th, to 40 cents per barrel.

It is hereby ordered that no producer in the Healdton field shall take any oil from the oil sands of that field, for sale, at a price less than 50 cents per barrel until such time as the conditions can be fully investigated by the Commission, and no common purchaser or other person shall purchase oil hereafter taken from the oil sands of the Healdton field at less than 50 cents per barrel until such time as the Commission can hear and determine the necessities for the less price.

All parties having storage oil are hereby notified that if the same is sold at less than 50 cents per barrel without permission of the Commission after an investigation as to the quality of the oil, same will be prorated against their runs through the pipe lines.

Dated at Oklahoma City, Oklahoma, this 1st day of October, 1914.

[fol. 204] PLAINTIFF'S EXHIBIT 37

No. 37, Record, p. 282

Order No. 846 A (undated, but made during Sept. 1914, No. 847 being dated October 1st, 1914), which reads as follows:

Order No. 846A. Cause No. 2041

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

vs.

MAGNOLIA PIPE LINE COMPANY, a Corporation; OKLAHOMA Pipe Line Company, a Corporation; Gulf Pipe Line Company of Oklahoma, a Corporation; The Texas Company, a Corporation, and Prairie Oil & Gas Company, a Corporation

SUPPLEMENTAL OPINION AND ORDER TO ORDER No. 846

Appearances: For Complainants, Chas. West, Attorney General. For Oklahoma Pipe Line Company, Nate Gibson; for Gulf Pipe Line Company of Oklahoma, J. B.

Diggs; for the Texas Company, C. B. Ames; for Prairie Oil & Gas Company, W. S. Fitzpatrick.

After two days hearing of the conditions attending the production of oil and the situation generally in Oklahoma, the Commission has arrived at the conclusion that no substantial relief can be given by any power or authority without a reasonable limitation of the production; that is, protecting one producer against the other. He may be forced to drill as set forth in our former opinion, and until a reasonable minimum price of 75 cents per barrel for oil can be obtained, oil should not be produced in quantities in excess of the reasonable market demands.

Owing to the cause of the condition of many wells and prior arrangements, no order conserving the oil in the ground can be immediately put into practical effect but must be done in a gradual reasonable manner. The oil producers of Oklahoma are now facing a condition that must be looked upon as a whole. In other words, if one individual owned all the oil properties of the state with all the obligations to meet and all the details of the business to be operated, and found himself circumstanced as the view of the situation appears as a whole, what would be the business judgment of this individual? He would doubtless pursue a course of limiting the production and in the meantime would dispose of the oil at the immediate demands until his business was shaped so he could put him- [fol. 205] self in a more independent condition. In our judgment this can likely be brought about within the next few weeks.

It is therefore ordered, no more wells shall be drilled into the oil sands within the State of Oklahoma without first obtaining permission of the Commission; that a plan will be immediately outlined to limit the production of the present producing wells in such manner as may be practical and will produce the least injury to the producing properties. No well shall be squibbed or shot without first obtaining the permission of the Commission.

The pipe lines are hereby relieved as common purchasers from taking any oil as common purchasers from any wells drilled into the oil sand or any producing wells squibbed or shot in violation of this order.

The order issued by this Commission on the 22nd day of September, 1914, fixing the price at which oil could be produced and at which it could be purchased at 65 cents, is temporarily suspended until further order of the Commission, and no corporation, firm or individual shall take oil from the oil sands of Oklahoma when same cannot be sold at a price not less than 55 cents, and no individual, firm or corporation shall purchase oil in Oklahoma at a less price than 55 cents until further order of the Commission.

The details and plan of limiting production will be prescribed by supplemental orders of the Commission from time to time as the circumstances may justify.

The Commission will hear all minor applications for exceptions to the order informally, and should an application be made that would involve any change of the general plan, it will be handled by the Commission formally and all parties notified.

[fol. 206] PLAINTIFF'S EXHIBIT 38

Order No. 844 (undated, but made during September, 1914, Record p. 283), which reads as follows:

Cause No. 2041

In re the Matter of Fixing the Price of Oil Bought by Common Purchasers in the State Having Pipe Lines

THE MAGNOLIA PIPE LINE COMPANY, a Corporation; THE Oklahoma Pipe Line Company, a Corporation; The Prairie Oil and Gas Company, a Corporation; The Gulf Pipe Line Company, a Corporation; The Texas Company, a Corporation.

TEMPORARY ORDER No. 844

The State of Oklahoma, by the Attorney General filed an application before the Commission stating that the State had been notified by the Prairie Oil and Gas Company that it, the Priarie Oil and Gas Company, would reduce the price of crude oil in the State of Oklahoma within five days from the date of said notice, and said notice was dated on the 5th day of September, 1914. The petition prays that the

Commission issue a temporary order preventing the reduction in the price of crude oil by the Prairie Oil and Gas Company until such time as the matter can be heard before the Commission.

It is hereby ordered that the Prairie Oil and Gas Company, the Gulf Pipe Line Company and the Texas Company shall not reduce the price of crude oil below seventy-five (75) cents per barrel until such time as the matter can be heard before the Commission.

It is hereby ordered that this case be set for hearing at any time within one day after request for the case to be set by either of the above companies.

[fol. 207] PLAINTIFF'S EXHIBIT 39

No. 39, Record p. 283

Order No. 846, dated Sept. 22nd, 1914, which reads as follows:

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA,

vs.

MAGNOLIA PIPE LINE COMPANY, a Corporation; OKLAHOMA Pipe Line Company, a Corporation; Gulf Pipe Line Company of Oklahoma, a Corporation; The Texas Company, a Corporation, and Prairie Oil & Gas Company, a Corporation

Order No. 846

Cause No. 2041

In re Supplemental Petition

The Attorney General has filed a supplemental petition styled, In re Fixing the Price of Crude Oil Bought by Common Purchasers in the State, Having Pipe Lines. The petition alleges, in substance, that an agreement was entered into between the Attorney General and the common purchasing pipe line companies, by which the Attorney General was to be notified five days in advance of any

reduction from the prevailing prices, to-wit: Fifty cents in the Healdton field and seventy-five cents in the northern field of Oklahoma; that the Attorney General has received notice from the Prairie Oil & Gas Company, dated the fifth day of September, 1914, that the price of seventy-five cents per barrel would not be maintained by them.

The petition prays that the Commission issue an order prohibiting the Prairie Oil & Gas Company from reducing the price of oil in the State of Oklahoma below seventy-five cents per barrel. The case was set for hearing September 15th, at which time it was continued to September 28th, so that in the meanwhile the Commission could issue a tentative order which may go into effect subject to any modification that may be found to be necessary at that time.

The maintaining of the price by law of a commodity is the application of an old precedent to modern conditions. Public authority has regulated prices in instances when the source of supply was controlled by monopoly or when the [fol. 208] business was of such monopolistic character that the sovereign power was invoked and exercised in protecting the public's welfare. In Oklahoma there is a statute conferring jurisdiction upon the Commission to regulate the practices, prices and services of any corporation or person engaged in a business having a virtual monopoly and dealing in a commodity which the public must use. Under this law the Commission has regulated the schedule of prices of persons engaged in the manufacture and sale of commodities, when such transactions were executed within the domain of the state.

Crude oil is a commodity that is produced throughout all parts of the world. It is found underneath the surface of the ground in pools or strata and the production therefrom is not uniform. For a period the production will decrease rapidly; suddenly a new pool of oil is found and the production in localities greatly exceeds the transportation facilities, while at the same time the total production throughout the country may not be greatly increased and in other sections of the country there may be a corresponding decrease. The producer of oil is practically helpless as to the number of wells he may drill or the amount of oil he may produce; oil either being in a common pool or flowing beneath the ground may be taken not only from the owner of the land upon which the well is located but may,

through this opening, be extracted from other lands, hence the owners of adjoining properties must drill an equal number of wells along either side of the line separating the two properties, and if the wells are kept flowing on one property, the other must be kept flowing in order that each may extract from the ground their reasonable pro rata of the oil. Gas is like oil in this respect, while in the mining of coal, if the market conditions are such that the coal cannot be produced at a profit the mine may be temporarily [fol. 209] closed, so long as the public may not suffer thereby. The oil producer cannot do this without the cooperation of all producers on adjoining properties or in a common pool or stratum. He is powerless, hence the oil must be produced whether he can get seventy-five cents per barrel, fifty cents per barrel or ten cents per barrel. He has made his investment and if he does not take the oil from under the ground, his neighbor may.

The price of a commodity uninfluenced by combinations or monopolies, should, and would be governed by commercial and economic conditions.

It has been claimed for the past twenty years that not only the price of crude oil, but the price of refined products has not, at all times, been based upon natural or commercial conditions, but that the same has been influenced to some extent by the Standard Oil Company, and its affiliated concerns. However this may be, the Commission is of the opinion that an order fixing the price of oil in the sense of determining what the market conditions would justify may be impracticable with the limited information before the Commission.

The theory of maintaining the price of oil by State authority has been subject to misunderstanding by the public. It is doubtless the law that individuals may barter and sell to one another such commodities as they possess at such prices and upon such terms as may be agreed upon. The intention to interfere with this liberty to contract, as is known to the law, has never been contemplated by this Commission, nor by even the statutes conferring authority upon the Commission.

Before a sovereign authority should be exercised to interfere in the making of the price of a commodity, there should exist a virtual monopoly with the power to arbitrarily fix prices and conditions upon which such property

is sold. No more apt illustration can be afforded than that [fol. 210] presented by an oil pipe line penetrating an oil field and furnishing the only practical market for the crude petroleum which has been brought to the surface under conditions heretofore described. Under such conditions of sale of crude petroleum no contractual relations actually exist as are contemplated by the Constitution of the United States. One of the fundamental elements necessary to a contract is that the minds of the contracting parties must meet. There is no meeting of the mind and no actual freedom in agreement by such sale. Hence, the taking of a commodity under such circumstances and at less than its value or less than the commercial conditions would justify, is the arbitrary enforcement of an advantage which in fairness should not be permitted. A sale or taking under these conditions may properly be characterized as a species of extortion. The State under its police power has authority to prevent extortion in any form, and hence, when the term fixing price is used in connection with the exercise of the authority of the Commission, it is not in fact a proper recognition of what fixing a price means to the commercial world. It is simply the State exercising its police power to prevent extortion. This principle is not new. It has been conceded for centuries that banks could be limited in their contracts to the amount of interest they could charge the user of their money. The same right to contract between the borrower and lender has always existed as to the transactions, yet, it is so apparent that the banker with the money of the community collected in his bank and there being individuals who must use it, the banker has an advantage that could be exerted to extort from the borrower an unreasonable interest. The State has prevented this practice in both the private and public loaning or money and the attempt to maintain an existing price of a commodity is the exercise of a similar authority and is but the application of that principle.

[fol. 211] In the case of the German Alliance Insurance Company v. Lewis, in Advance Sheets of the Supreme Court Reports of June, 1914, the Supreme Court of the United States, by Justice McKenna, delivered a very exhaustive opinion, dealing with the rights of the State to regulate the making of private contracts.

On page 618 the court says:

"The argument encountered opposing examples, among others, the regulation of the rate of interest on money. The regulation was accounted for on the ground that the act of Parliament permitting the charging of some interest was a relaxation of a prohibition of a common law against charging any interest; but this explanation overlooked the fact that both the common law and the act of Parliament were exercises of government regulation of a strictly private business in the interest of public policy—a policy which still endures and still dictates regulating laws. Against the conservatism of the mind which puts to question every new act of regulating legislation, and regards legislation invalid or dangerous until it has become familiar, government—state and national—has pressed on in the general welfare and our reports are full of cases where instance after instance the exercise of regulation was resisted and yet sustained against attacks asserted to be justified by the Constitution of the United States. The dread of the moment having passed, no one is heard to say that rights were restrained or their constitutional guaranties impaired."

Again on page 621, Justice McKenna further says:

"We may venture to observe that the price of insurance is not fixed over the counters of the companies by what [fol. 212] Adam Smith calls the higgling of the market, but formed in the councils of the underwriters, promulgated in schedules of practically controlling constancy which the applicant for insurance is powerless to oppose, and which therefore has led to the assertion that the business of insurance is of monopolistic character and that 'it is illusory to speak of a liberty of contract.' It is in the alternative presented of accepting the rates of the companies or refraining from insurance, business necessity impelling if not compelling it, that we may discover the inducement of the Kansas statute; and the problem presented is whether the legislature could regard it of as much moment to the public that they who seek insurance should no more be constrained by arbitrary terms than they who seek transportation by railroad," etc.

The purchase of oil is largely conducted with the same advantage and arbitrary power as is the insurance business, which was so logically analyzed by Justice McKenna.

The seller of oil has heretofore had nothing to say as to the price. Circumstances forced him to sell. He has had no other practical alternative. To let his property deteriorate or be drained by reason of his product being a fugitive one is materially the same to the owner as the depletion of his property by fire without insurance. Hence, before the Commission is justified in exercising the authority conferred upon it the following conditions must exist:

First. Monopolistic control must exist such as would practically destroy the liberty of contract.

Second. A commodity must be dealt in which the public must use under modern necessities and business requirements.

Third. A benefit to the public and a correction of the wrong to the individual should result from an order.

[fol. 213] Under the first requirement, what are the facts as to the monopolistic character of the oil business by which the price may be arbitrarily fixed?

Prior to the time pipe lines became common carriers by decree of court the Standard Oil Company and its affiliated companies controlled the greater number of large refineries and the pipe lines reaching the principal oil field of the country. It also possessed almost unlimited facilities for distributing the manufactured by-products taken from the crude. With but few exceptions no one can sell oil direct to the Standard Oil refineries except some subsidiary company which purchased the oil from the producer and transported the same through its own pipe line. It was unsafe and not the part of business prudence for independent refineries to embark in the business along the lines of these pipe lines as business is built up along the lines of railroads, because they had no means of compelling the Standard Oil Company to accept or deliver crude petroleum to or from its pipe line, save upon such conditions and terms as might be offered by the Standard Oil Company.

The difference in the cost of transporting oil through pipe lines as compared with the cost of transportation by rail is so great that the oil transported through pipe lines had a distinct commercial advantage and an average difference in transportation cost in favor of the pipe line throughout the country of approximately fifty cents per barrel, depend-

ing upon the distance transported. This difference was so great that it responded by giving the owners of pipe lines a virtual monopoly of the transportation, manufacture and distribution of crude petroleum and its products. In times past when a crude oil pool was discovered in Oklahoma, some of the pipe lines on a very small tract in or near the center of a pool extracted an undue proportion of the oil from their own properties and refuse to buy oil from other [fol. 214] producers within the same pool. This caused the owners of adjoining properties to sacrifice the same at any price that may be offered. To correct this evil the legislature enacted a law known as the Common Purchaser Act, requiring all pipe line companies to purchase crude petroleum pro rata from all producers in a given field according to the potential production of such producer. The pipe line companies have operated under this Act without contesting the same in the courts, and it now appears to be a fixed principle of law based upon justice and equity. The Common Purchasers Act is only another form of preventing extortion and unfair dealing in requiring the pipe line companies to take oil from all the producers by purchase instead of permitting the pipe lines to take it through wells drilled on their own properties and the common pool exhausted without regard to its fair distribution among the surface proprietors thereof.

It is now insisted that since the pipe lines have been made common carriers that they are open to the public and oil can be transported throughout the country. There would be more force in this argument if the principal part of the large refineries of the country did not belong to the same interests that own and operate the pipe lines.

When market conditions adjust themselves, as to the commodity of oil, and pipe lines sustain the same relation to the public as railroads and refineries are built up at different localities along the pipe line and disassociated from them as industries are established on railroads, the contention that the pipe line companies have now been deprived of their monopolistic character will have much more force.

It is contended that the rates promulgated by the pipe lines for the use of the public are greatly in excess of a reasonable rate, and a committee of experts appointed by [fol. 215] the oil producers have submitted to the Corpora-

tion Commission an estimate which covers the cost of the pipe lines, the depreciation fund of five per cent, interest on the investment at eight per cent, sinking fund of five per cent, and all operating and maintenance costs. This estimate shows that an eight-inch pipe line can transport oil to the Gulf ports on the above basis of expenditures and cost of operating at approximately seventeen cents per barrel. Assuming that the public is charged twenty cents per barrel, the rates now charged by the pipe lines, including gathering charge, is approximately fifty cents per barrel. If twenty cents per barrel is a reasonable charge, the pipe lines still have an advantage of thirty cents per barrel over the independent oil shipper. A similar relation exists upon the transportation of oil to the eastern points, which indicates that the pipe lines have an advantage by reason of the rates promulgated of from thirty to forty cents per barrel.

If the data furnished the Commission is correct, as long — these rates exist, the pipe lines still have a virtual monopoly of the business.

Second. Are the products of crude oil a commodity which the public must use?

We deem it unnecessary to go into an extensive discussion of this phase of the case. While the product of crude oil is a commodity which the public could exist without, yet because of the various uses and machinery and vehicles that have been constructed and are now in operation by reason of the products of oil, that for the public to be deprived of them would be a public calamity. Financial losses and inconveniences to the public could hardly be estimated. In fact, the avenues of commerce could scarcely be operated, at least not without a greatly increased cost to the public. Hence, crude oil and now ten million barrels of surplus pro- [fol. 216] duction of oil stored in the Cushing field the public must use.

Third. Notwithstanding the conditions described above it becomes a question of discretion as to whether or not the Commission should exercise the authority in this particular case.

We are confronted with a condition that will doubtless exist only temporarily, that is, a great pool of oil in what is known as the Bartlesville oil sand in the Cushing field

has been developed, the production of which is greatly in excess of the market demands or the pipe facilities. With the helplessness of the oil producer in materially curtailing the production and holding his oil in the ground until such times as the transportation facilities and market conditions will care for it, he is forced to store it at a cost of approximately thirty cents per barrel, including loss the first six months by evaporation. There are now ten million barrels of surplus production of oil stored in the Cushing field. When the expense on the producer is daily growing heavier, he naturally seeks any available means open to him to dispose of the oil at any price so as to take care of uncontrollable but consequential accruing obligations. Hence, oil has been offered in lots of from 100,000 to more than one million barrels at prices much lower than was being paid at one time by the pipe line companies. In some few instances the difference in the price alleged to have been made represents the cost of steel tankage. Hence, the difficulty of an order resulting in substantial benefit to the public and extricating the producer from the difficulties with which he is surrounded.

Should the Commission find that it would be extortion for the pipe lines to pay less than 75 cents per barrel for crude oil in the Cushing field, without some means of controlling the manner in which oil is taken from the ground, the following may be the result:

[fol. 217] (1) The pipe lines would take only such oil from the Oklahoma fields as they could market profitably at that price. Some few producers of the field may contract their oil at a price to a few scattered refineries and secure an advantage of the available markets for the large portion of their potential production. Other producers, limited to the established agencies of sale at a fixed price, would be cut off from their pro rata of the markets. Hence, those that were fortunate enough to secure these sales at low prices would drain the pool, and therefore take the adjoining property owner's oil or force him to tank the same and hold it in storage indefinitely.

(2) While the pipe line companies are now common purchasers, it is undetermined at this time when or how they may withdraw from the state as common purchasers. It is conceded that they cannot be required to take more oil than

they can market at a reasonable profit. Should they withdraw from the state as buyers of oil, refineries which they are now supplying could purchase oil, making the contract at the point of delivery beyond the limits of the state, and in this way avoid the effect of the order.

It is these last considerations that have given the Commission the great concern and hesitancy in determining what the pipe line companies should pay for this oil to avoid extortion. Unfair dealing and extortion could not be seriously urged when many of the producers are offering their oil at a much less price than the pipe lines are actually paying. This contention would be of great force were it not for the fact of the advantage that the pipe lines have in transportation charges and the principal refineries of the country belonging to the same interests. It is generally conceded that the export market because of the war has been temporarily disturbed, and that for a time the export trade was very much unsettled. We have learned recently [fol. 218] that the export trade is materially improving.

All of these conditions confront the Commission in determining this question. It will not at this time pass upon the question of fixing price on the theory of market conditions and extortion, but will leave the matter open for further consideration of the third requirement, as to the result of the order.

As to the first two questions of the monopolistic condition and that the commodity is one that the public must use, the Commission finds that under ordinary conditions the pipe lines and their affiliated companies have a virtual monopoly and that the commodity is one which the public must use.

Further consideration will be given to the third question on the 28th, and the Attorney General and other counsel for the producers, as well as all other interested parties are now requested to direct their consideration as to how its discretion in this behalf should be exercised in order that they may advise the Commission.

We will next consider:

(1) Can the state regulate the taking of oil from the ground?

(2) If the state can regulate the taking of crude oil from the ground, has authority been delegated to the Cor-

poration Commission to prescribe the rules and regulations?

The authority of a state to prescribe reasonable rules and regulations for taking oil from the ground has been passed upon by the Supreme Court of the United States in the case of Ohio Oil Company v. Indiana, 177 U. S., page 200, where Justice White said:

"Thus it is apparent from the admitted facts that the oil and gas are commingled and contained in a natural reservoir which lies beneath an extensive area of country and that as thus situated the gas and oil are capable of flowing [fol. 219] from place to place and are hence, susceptible of being drawn off by wells from any point provided they penetrate into the reservoir. * * * From this it must necessarily come to pass that the entire volume of gas and oil is in some measure liable to be decreased by the act of anyone who within the superficial area bores wells from the surface and strikes the reservoir containing the oil and gas. Hence, of course, it is certain, if there can be no authority exerted by law to prevent the waste of the entire supply of gas and oil, or either, that the power which exists in everyone who has the right to bore from the surface and tap the reservoir involves in its ultimate conception the unrestrained license to waste the entire contents of the reservoir by allowing the gas to be drawn off and to be dispersed in the atmospheric air and by permitting the oil to flow without use or benefit to anyone. These things being lawful, as they must be if the acts stated cannot be controlled by law, it follows that no particular individual having a right to make borings can complain, and thus the entire product of oil and gas can be destroyed by any one of the surface owners. The proposition, then, which denies the power in the state to regulate by law the manner in which the gas and oil may be appropriated, and thus prevent their destruction, of necessity involves the assertion that there can be no right of ownership in and to the oil and gas before the same have been actually appropriated by being brought into the possession of some particular person. * * * The question here arising does not require a consideration of the matters just referred to, but it is this: Does the peculiar character of the substances, oil [fol. 220] and gas, which are here involved, the manner in

which they are held in their natural reservoirs, the method by which and the time when they may be reduced to actual possession or become the property of a particular person, cause them to be exceptions to the general principles applicable to other mineral deposits, and hence subject them to different rules? True it is that oil and gas, like other minerals, are situated beneath the surface of the earth, but except for this one point of similarity, in many other respects they greatly differ. They have no fixed situs under a particular portion of the earth's surface within the area where they obtain. They have the power, as it were, of self-transmission. No one owner of the surface of the earth, within the area beneath which the gas and oil move, can exercise his right to extract from the common reservoir, in which the supply is held, without, to an extent, diminishing the source of supply as to which all other owners of the surface must exercise their rights. The waste by one owner, caused by a reckless enjoyment of his right of striking the reservoir, at once, therefore, operates upon the other surface owners. Besides, whilst oil and gas are different in character they are yet one, because they are unitedly held in the place of deposit."

The Supreme Court of Pennsylvania carefully considered this same subject in the case of Hague v. Wheeler, 157 Pa., page 340, in which the court said:

"Now it is doubtless true that the public has a sufficient interest in the preservation of oil and gas from waste to justify legislation upon this subject. Something has been done in this direction already by the acts regulating the plugging of abandoned wells. * * * In the disposition [fol. 221] he may make of it (private property) he is subject to two limitations. He must not disregard his obligations to the public. He must not disregard his neighbor's rights. If he uses his product in such a manner as to violate any rule of public policy, or any positive provision of the written law, he brings himself within the reach of the courts."

There are many other authorities to the effect that the public has an interest in the proper preservation of any commodity which it must use. The state has the authority to regulate the taking of oil from the ground so that differ-

ent owners of the land in a common pool or stratum may be protected from the careless or reckless drilling that would injure the common strata of oil in any way or to prevent waste.

The next question is, has the state passed a law delegating authority to the Commission to prescribe the necessary rules and regulations for the taking of oil from the ground? It is conceded that when the owner reduces oil to possession and once has it in storage he may dispose of it according to his wishes. Section 8235 of the Revised Statutes of Oklahoma, 1910, confers all the authority the Commission may have to prescribe these regulations, which reads in part as follows:

"Whenever any business by reason of its nature, extent, or the existence of a virtual monopoly therein, is such that the public must use the same, or its services, or the consideration by it given or taken or offered, or the commodities bought or sold therein are offered or taken by purchase or sale in such a manner as to make it of public consequence or to affect the community at large as to supply, demand or price or rate thereof, or said business is conducted in violation of the first section of this article, said business is a [fol. 222] public business, and subject to be controlled by the state, by the corporation commission or by an action of any district court of the state, as to all of its practices, prices, rates and charges," etc.

The above section is only a declaration of the common law, but is often referred to as part of the Anti-Trust Statute of Oklahoma. While this section is part of the chapter on the regulation of trusts and monopolies, it is only the legislature declaring the common law and conferring upon the Commission jurisdiction to determine the rules and regulations as may be necessary in each particular case. In fact, this has been the law since Moses descended from Mount Sinai; however, at that time there may not have been as many examples as now for the application of the law. A law may be dormant for a thousand years, but as soon as a business condition arises requiring its application it is just as much the law as if it had been in continuous operation.

Each part of this law is co-ordinate and stands alone. The above section is analyzed and separated into parts which are co-ordinate, as follows:

(1) Whenever any business by reason of its nature and extent;

(2) Whenever any business by reason of the existence of a virtual monopoly therein;

(3) Whenever any business affects the community at large as to supply, demand or price or rate thereof, such business is subject to be controlled by the State by the Corporation Commission or by action in any district court of the state as to all of its practices, prices, rates and charges.

Is the oil business by reason of its nature and extent or the existence of a virtual monopoly therein, or does it affect the community at large as to supply, demand or rate [fol. 223] thereof, to bring it within the provisions of the above law?

The conditions under which oil is produced have been described in the first part of this opinion. There are two theories advanced to relieve the condition that now exists. First, to dispose of the temporary over-production in the Cushing pool for any price at which it may be sold. Second, to preserve the oil in some manner by partially closing the wells and only producing enough oil therefrom to supply the present demands at a reasonable price, that the oil may be preserved for the benefit of the owners of the property who do not want to waste the same and of the public at large.

The first proposition means the oil shall be thrown on the market whether it brings 65 cents, 50 cents or 20 cents per barrel; that uses for the same may be created that it may supersede coal for fuel purposes, and that it may be used for sprinkling the streets instead of water from the Arkansas River and other streams. None of the oil producers desire this to be done, but would prefer to produce the oil in such manner as to obtain a reasonable price.

The public becomes interested in the matter, in that this is an extremely high grade oil; in fact, it is among the best oil for refinable purposes in the mid-continent field, the specific gravity of which is more than forty. Gasoline

manufactured from this oil is now being sold at the refinery for 7 cents per gallon, kerosene 2¼ cents per gallon and fuel oil 40 cents per barrel. These are the lowest prices for these products that has obtained in Oklahoma, notwithstanding the oil from which those products were refined sold at 75 cents per barrel. The independent refineries claim they are not making a reasonable profit and should receive 8 cents per gallon for gasoline, 3 cents for kerosene and 50 cents per barrel for fuel oil. The public has never complained at prices even as high as those now suggested [fol. 224] by the refineries they should receive and pay 75 cents a barrel for oil.

Should the oil that is now being produced at Cushing be destroyed in the manner which some, with apparently good business judgment, insist should be done, the prices of gasoline would immediately thereafter advance to 25 cents per gallon to the consumer and kerosene from 10 to 15 cents per gallon and fuel oil 75 cents per barrel. During the period of the destruction of this oil all the other oil properties in the state would be paralyzed, and notwithstanding the great volume of oil that may be produced from the Cushing sand, it would have been better for the oil producers at large had this oil never been discovered, and in fact, the public at large would receive no substantial benefit therefrom.

Anything that demoralizes a whole industry to such an unnatural and unreasonable extent should, in some way, be controlled by public authority. If this oil could be conserved and used as demands may justify, the public could continue to buy gasoline and kerosene at a reasonable price. No individual or half dozen individual oil producers in the Cushing field can control the situation. They are carried along in a whirlpool of production as helpless as a child in mid-stream and cannot prevent the inevitable result. They cannot even protect their own property by holding the oil until such times as market and transportation conditions will properly care for the same. Hence, is the section of the statutes above referred to sufficiently broad to authorize the Commission to prescribe the rules and regulations for the taking of oil from the ground within the State of Oklahoma?

The rule usually invoked by lower courts when in doubt as to law is to give the public the benefit of that doubt and let the Supreme Court finally determine what the law is.

[fol. 225] It is claimed by the Attorney General that should the Commission hold it had no jurisdiction the public would not have further remedy and could not have the law finally determined by the Supreme Court. Conceding that the Commission has jurisdiction to regulate the taking of oil from the ground, the next question that is of moment is, whether or not the whirlpool of production is such at this time that the production of oil can be effectually controlled. It can be done with the hearty cooperation of every producer in the state, yet, this storm of production has grown to such an extent that there are many producers who may be forced to consider their own financial condition instead of the public interest.

There are ten million barrels of oil now stored in the Cushing field, the deterioration of which will range from ten to twenty-five per cent the first year, hence this is from two to two and a half million barrels of oil destroyed by this process. Many barrels flow down the creek and are destroyed in various ways. Can not the state come in and stop this waste of a product which it must use? When a barrel of oil is destroyed it can never be reproduced. If a crop of an agricultural product cannot be sold for its value this would not be of such great moment to the public because another crop can be raised. Had not oil been discovered in Oklahoma we would doubtless be paying from 40 to 50 cents per gallon for gasoline, but with the discovery of oil in Oklahoma many independent refineries have been able to exist and we are now enjoying the lowest prices for the refined product in the history of the world.

Shall the public sit idly by and see this commodity destroyed, not knowing but that this is the last great oil field on this continent, and let plan of destruction be carried out? Our judgment compels us to say no. Hence, what shall be the standard to determine waste? It is cer- [fol. 226] tainly waste to store large quantities of oil where it loses one-fourth of its value within a short period of time. It would be waste when we consider the great interest the public has in this commodity; it would be waste during a temporary production in excess of the market or pipe line facilities to sell same so it may be for uses of no greater value than 10 cents per barrel. Would it be abuse of discretion for the Commission to use the price of oil as a standard to measure waste? If it can use 10 cents per barrel as a

standard it may use 20 cents. It is our conclusion that oil of the gravity and grade of the Cushing oil and the average oil of Northern Oklahoma should not be taken from the ground at a time when it could not be sold at a minimum price of 75 cents per barrel, hence 75 cents per barrel will be the standard now adopted by the Commission, and any oil taken from the ground under conditions and circumstances that would not produce 75 cents per barrel, will be considered as against public policy and against the best interests of the state. The Commission cannot issue an order preventing the common purchasers from paying less than 75 cents per barrel for oil unless the oil can be retained in the ground until the market conditions justify the taking of it therefrom.

It is hereby ordered, that all producers shall not take more oil from their wells than can be sold upon the market at 65 cents per barrel, or stored in regulation steel tankage, until the first day of October, 1914; that the rules and regulations for the curtailing of production will be considered by the Commission at the hearing on September 28th, at which time it will be determined how long the price shall continue at 65 cents per barrel, with a view of raising the same to 75 cents per barrel, the basis of which the Commission has found to be just to prevent waste. The Commission will also consider rules and regulations with reference to storing oil with a view of limiting the storing to a mini-
[fol. 227] mum amount.

It is further ordered, That no common purchaser or other purchaser of crude oil in the state of Oklahoma shall buy oil at a price less than 65 cents per barrel until further ordered by the Commission.

For the hearing of September 28th, the Commission suggests that the business interests, including the oil producers as well as other affiliated interests, give full consideration to the plan outlined, that is, the curtailing of production to the reasonable market demands and in what manner this can best be done, that the Commission may have the benefit of their business judgment. The Commission can give but little consideration to opinions based upon self interests alone, but invites a consideration of the subject from a broad public and business standpoint with that iron will of determination that characterized Andrew Jackson.

In witness whereof, we have hereunto set our hands and affixed the seal of the Commission this, the 22nd day of September, A. D. 1914.

[fol. 228] PLAINTIFF'S EXHIBIT 40

No. 40, Record, P. 283

Order No. 1023, dated February 18th, 1916, which reads as follows:

Order No. 1022. Cause No. 2381

In re STATE OF OKLAHOMA, by S. P. FREELING, Attorney General,

vs.

CORSICANA PETROLEUM Co. et al.

Appearances: S. C. Matson and Judge Johnson for the state. G. C. Greer, A. C. Cruce, and R. A. Hefner, for the Corsicana Petroleum Co.

FINDINGS OF FACT, OPINION, AND ORDER

By the COMMISSION: Complaint in this case was filed by the State of Oklahoma on relation of the Attorney General under Sec. 2, Chap. 25, of the Session Laws of 1915, and in substance alleges:

First. That the Corsicana Petroleum Co. and many other persons, firms and corporations are engaged in the production of crude petroleum in the Healdton oil field, which field has a production of approximately 80,000 barrels a day which may be greatly increased by additional drilling.

Second. That the amount now being produced is greatly in excess of transportation and marketing facilities, and in excess of the market demands, thereby causing great economic waste.

(a) That because of said over-production, the reasonable market value of said oil is not being paid and cannot be obtained so long as such large quantities of oil are pro-

duced at a price far below its intrinsic value and lower than other similar oils in the United States.

(b) Because the Magnolia Pipe Line is at present the only means of transporting said oil to other markets beyond the state, that its rates as a common carrier are excessive and prohibitive and by its use great economic waste is incurred to the producer in the state.

[fol. 229] (c) Because throughout the oil producing territory of the United States, and what is known as the Mid-Continent field, the price of crude oil has increased as much as 100 per cent within the last ninety days, while the price of oil in the Healdton field has only been raised 5 cents per barrel; that the relative value of said crude oil is only slightly different; that formerly the price of Cushing and other oils in Oklahoma was 40 cents per barrel; Healdton, 30 cents per barrel; that now the Cushing and other oils in Oklahoma are selling at 80 cents per barrel and Healdton oil at 35 cents per barrel; that all the by-products have enhanced in value, and gasoline, one of the products of the Healdton oil, has enhanced 50 per cent in value.

Third. That the present intrinsic value of Healdton oil as compared with the value of other similar oils in the State of Oklahoma is 55 cents per barrel.

Fourth. That the production of crude oil has recently been greatly reduced, caused by the exhaustion of oil fields, and that the demands of by-products are in excess of the production, which should enhance the price of the Healdton crude oil much beyond the present price; that by permitting said oil to be taken from the sand at the present prices is an economic waste, as defined by law.

Fifth. That some of said producers are willing to dispose of their crude oil at the price of 30 cents per barrel, while others object because of the inadequate price, but are forced to sell at that price to protect their interests in said common pool of oil against the taking by others who persist in draining the pool; that the Corsicana Petroleum Company is the producing company of the Magnolia Petroleum Company, which the state alleges owns the property of the Magnolia Pipe Line Company, all three

of said companies being in fact one and the same, and under the same management; that the said Corsicana Pe-
[fol. 230] troleum Company has a large production of crude oil in the Healdton field scattered throughout the field, and can force and does force every producer adjoining its property to accept any price fixed by the Magnolia Petroleum Company or lose its pro rata share of the oil in the common pool, and thereby enables the Magnolia Petroleum Company not only to fix the price without regard to value of crude oil, but compels adjacent producers to produce crude oil in self-protection, which forces others adjacent to them to do likewise until the whole field is coerced to accept any price fixed by the Magnolia Petroleum Company, and is aiding and abetting said Magnolia Petroleum Company in extorting crude oil at a confiscatory price from the other producers.

Sixth. That some producers are placing oil in steel storage and others are preparing to do so. That this aggravates the situation as the small producers are unable to furnish storage. These producers unable to store oil will be compelled to accept any price or lose their pro rata of oil from the common pool, thereby causing great economic loss.

Seventh. That the only equitable remedy to conserve the interests of the state and producers is to only permit the production from oil bearing sands in the Healdton field of such quantities of crude oil as will supply the transportation and market demands therefor, when a minimum price is paid to all producers as may be fixed by the Commission from time to time, taking into consideration the relative value of said oil with other similar oils having a competitive market for same.

Eighth. That the state receives a gross tax upon the value of crude oil amounting to 2 per cent, and is interested in having a fair price paid for same, and prays that the decree be rendered securing the state and the owners of oil production the protection contemplated by its laws; that extortion be prevented by fixing a minimum price at which said oil must be sold for before its production will be per-
[fol. 231] mitted and for such other relief as the Commission may in its judgment deem proper in the premises.

No formal answer was filed by any of the defendants.

Sec. 2 of Chap. 25 of the Session Laws of 1915 reads as follows:

"That the taking of crude oil or petroleum from any oil-bearing sand or sands in the State of Oklahoma at a time when there is not a market demand therefor at the well at a price equivalent to the actual value of such crude oil or petroleum is hereby prohibited and the actual value of such crude oil or petroleum at any time shall be the average value as near as may be ascertained in the United States at retail of the by-products of such crude oil or petroleum when refined less the cost and a reasonable profit in the business of transporting, refining and marketing the same, and the Corporation Commission of this state is hereby invested (vested?) with the authority and power to investigate and determine from time to time the actual value of such crude oil or petroleum by the standard herein provided, and when so determined said Commission shall promulgate its findings by its orders duly made and recorded, and publish the same in some newspaper of general circulation in the state."

The Commission in Cause 2041, Order 846, held that it was impracticable to fix a price of oil based upon market or commercial conditions. It further held that the only theory upon which the state could fix the price of a commodity was to prevent extortion, upon the same theory and under the same law and same constitution that the price for the loan of money is fixed by statute.

[fol. 232] It is universally conceded that the state may fix a reasonable price that the lender shall charge the borrower for money on the assumption that the lender may have an advantage of the borrower and override him and charge him an extortionate rate of interest. If the purchasing party of crude oil had available markets and pipe lines, it could put the price of oil to 3 cents per barrel and force common owners of a pool to sacrifice their oil at that price. If such practices are extortion, there is no contract between the buyer and seller. Their minds did not meet and such practices or extortions are subject to regulation by state authority.

While the Supreme Court of the United States has repeatedly held that the state may regulate the production of oil equitably between the different producers who have a right to take from a common pool, it has also held in the case of Lindsley vs. Natural Carbonic Gas Co., 220 U. S. 61, that:

"It does not take from the surface owner the right to cap the underground rock and to draw from the common supply, but consistently with the continued existence of that right so regulates its exercise as reasonably to conserve the interests of all who possess it. That the state consistently with due process of law may do this is a necessary conclusion from the decisions of the case cited. (Referring to Ohio Oil Co. v. Ind., 177 U. S. 190.)"

In Order No. 846, the commission was acting under Sec. 8235 of the Revised Statutes of Oklahoma, 1910, which gave the Commission jurisdiction to regulate the prices and practices of all parties dealing in a commodity which the public must use. In that case it was held that where a pipe line or common purchaser had a virtual monopoly that it was an unfair practice for one producer to make [fol. 233] his neighbor produce oil at 10 cents a barrel and under the conditions as then existed it was an unfair practice and virtual waste to produce Cushing oil at a time when it was worth less than 55 cents per barrel. This order was in force and effect and obeyed by all common purchasers until after Chap. 25, above referred to, was enacted. Chap. 25, Session Laws of 1915, specifically prescribes the jurisdiction of the Commission for fixing the price of the commodity. It does not give the Commission jurisdiction to fix a price based upon extortion or waste, but prescribes the conditions upon which the Commission may fix a price for crude oil.

The Commission finds the evidence in this case to be insufficient upon which to base a conclusion as to the value of crude oil based upon the selling price of refined products. At the time the complaint was filed, oil in the Healdton field was selling at 35 cents per barrel. It is now (outside of the record) selling at from 75 cents to $1 per barrel. The by-products fluctuate in price, whether because of increased demand or because the price may be influenced

by monopoly may not in all instances be easily determined. If the price of the by-products should be advanced at some time when the demand was greater than others, under the theory of this law the price of crude oil would be advanced, and it would make it impossible to reduce the price of the refined product, and have the effect of increasing the refined products to the consuming public, when the relation between the crude oil and refined oil was established by the Commission, if such a thing were possible.

Without going into all the details of the evidence with reference to the realtive value of the Healdton oil with other oils, we are of the opinion that the fixing of a price of crude oil under Sec. 2 of this act is absolutely impossible and impracticable. The complaint is therefore dismissed.

Oklahoma City, Oklahoma, Feb. 18, 1916.

[fol. 234] PLAINTIFF'S EXHIBIT 41

Filed in Supreme Court of Oklahoma Aug. 28, 1930. Jessie E. Moore, Clerk.

No. 41, Record, p. 284.

Transcript of Proceedings in C. C. Julian Oil & Royalties Co. v. Fred Capshaw et als., No. 21640, Oklahoma Supreme Court Reports, Vol. 145, page 237; also 292 Pacific page 841:

(a) Petition for Writ of Prohibition:

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 21640

C. C. JULIAN OIL & ROYALTIES COMPANY, Petitioner,

vs.

FRED CAPSHAW, E. R. HUGHES, and C. C. CHILDERS, Corporation Commissioners of the State of Oklahoma, Respondents

PETITION FOR WRIT OF PROHIBITION

Comes now, C. C. Julian Oil & Royalties Company, petitioner herein, and respectfully represents and shows to this Court:

1

Your petitioner, C. C. Julian Oil & Royalties Company is a business trust organized and existing under and by virtue of the laws of the State of Oklahoma; and that the respondents, Fred Capshaw, E. R. Hughes and C. C. Childers, and each of them are resident citizens of Oklahoma County in the State of Oklahoma, and are duly elected, qualified and acting Corporation Commissioners of the State of Oklahoma, and as such constitute the State Corporation Commission of the State of Oklahoma.

2

That heretofore and on or about the 24th day of July 1930, the respondents herein purporting to act as the Board of Corporation Commissioners of the State of Oklahoma made and entered of record in the Corporation Commissioners office a certain order number 5246 which order is a new order entered in place of order under date of June 30, 1930, a copy of which purported order is hereto attached, marked Exhibit "A" and made a part hereof, and its predecessor order made Exhibit "B" hereto.

3

That your petitioner herein was not a party defendant or plaintiff in said matter and no service whatsoever was [fol. 235] had in said matter upon the petitioner herein, and that no notice whatsoever was given to your petitioner herein of the pendency of said action or of the intention to make or enter said order, and said order and the preceding order thereto was entered herein wholly without notice to this petitioner.

4

That in said order the respondents herein purported to find that the potential production of crude oil in the State of Oklahoma has increased 1,400,523 barrels per day while the reasonable market demand has decreased from 650,000 barrels to 550,000 barrels per day, a decrease of 100,000 barrels in the daily average demand from June 30, and it is further found therein that it is therefore necessary to further curtail the output of crude petroleum in Oklahoma.

5

That in said order it was further provided that all purchasers or carriers of oil in the State of Oklahoma be and they are forbidden to purchase or carry oil produced in violation of the orders of the commission, but in said order no pro rata distribution of any deduction in allowable crude as between the many fields in the State of Oklahoma was made, but arbitrary ratios of allowable was made for the assigned reason that there was an overproduction of crude in the United States and if some conservation be not made in Oklahoma some of our sister states might produce crude in excess of their local demands, and that the industry might be demoralized; and said respondents on said purported grounds made each of said orders and not to prevent waste.

6

That C. C. Julian Oil & Royalties Company is the owner of oil and gas leases in Oklahoma County in the State of Oklahoma, in what is hereafter spoken of as The Oklahoma City field on the following described property to-wit:

Lots 46, 47 and 48 of Block 2 of Carrico's Subdivision of Block 1 of Magnolia Heights Addition to the City of Oklahoma City, Oklahoma;

and that the C. C. Julian Oil & Royalties Company has spent more than $100,000.00 in the acquisition, drilling and development of the said lands for oil and gas purposes and [fol. 236] is now the owner of an oil well on said lots; that the said well has been drilled to a depth of approximately 6600 feet, and now has a production of more than five thousand barrels of crude oil per day; that the respondents herein and each of them have no right, title or interest in and to the said lands or said leases or the said oil well or the production of oil therefrom.

7

That C. C. Julian Oil & Royalties Company is also the owner of other wells in the State of Oklahoma which it is drilling or has drilled and has spent large sums of money in prospecting same for oil and gas.

8

That the said C. C. Julian-Oil & Royalties Company has expended large sums of money and is employing a large number of workmen in the work of producing, transporting and preparing to refine the said oil produced from the said well hereinabove described and other wells, and said orders have resulted in the discharge by the various operators of a large number of employes.

9

That in all directions from the lands hereinabove described and surrounding the same is an oil field with more than one hundred producing oil wells therein; and that the greater portion of the said lands and oil and gas leases thereon are owned by divers and sundry persons, the names thereof being unknown to the plaintiff herein.

10

That serving the said oil field as hereinabove described are a large number of pipe lines, and railroads, which pipe lines and railroads are now and have for more than twelve months next prior to the filing of this petition been engaged in transporting the said oil from the said field to divers and sundry points and places outside of the State of Oklahoma; and said pipe line companies and railroads are now and have heretofore been engaged in Interstate Commerce in transporting said oil from said field.

11

That a large number of the owners of the oil wells in the said oil field as hereinabove stated heretofore and prior to the 24th day of July 1930, combined together and entered into a certain agreement wherein and whereby it *it* was [fol. 237] agreed that the said parties would and they did thereby form a combination in the form of a trust or conspiracy and then and there agreed among themselves that they would cause to be taken such action as would restrain the amount of oil shipped in the said railroads and pipe lines in intrastate and Interstate Commerce aforesaid and it was then and there agreed among them that a certain Operators' Committee should be formed, it being agreed among the said owners at such time that the said operators

would determine the amount of oil which could be produced by each and every operator in the said oil field and the amount of oil which should be run through the said pipe lines, the agreed purpose of the formation of said Committee being to restrain and withhold a portion of the commerce and trade through and from the State of Oklahoma and to the several states of the United States.

12

That thereafter and on the 24th day of July 1930, the said Operators' Committee appeared before the Corporation Commission of the State of Oklahoma composed as hereinabove alleged and there at said time petitioned the Corporation Commission of the State of Oklahoma to take jurisdiction of said action for the purpose of restraining the trade among the several states acting under the guise of House Bill No. 168, Session Laws 1915 of the State of Oklahoma.

13

That thereupon the Corporation Commission of the State of Oklahoma on July 24, 1930, entered its certain order No. 5246, a true copy of which is hereto attached, marked Exhibit "A" and made a part hereof.

14

That in the said order the said defendants, the Corporation Commission as aforesaid found as a matter of fact that it was necessary to curtail the output of crude petroleum in the State of Oklahoma; and that the said oil field as hereinabove defined should only be permitted to produce eighteen and three-fourths per cent of the potential production therefrom; and the said Corporation Commission further found that the reduction of permitted percentages of potential production should be made flexible so that should the demand for Oklahoma crude petroleum increase prior [fol. 238] to August 31, 1930, the percentage of reduction therein set forth might be reduced upon application of the umpire supported by evidence; the said umpire being an employe of the said Corporation Commissioner of the State of Oklahoma; and that in said order it was further pro-

vided that, all purchasers and carriers of oil in the State of Oklahoma be and they were thereby forbidden to purchase or carry oil produced in violation of said orders; and in the said order it was provided that when in the judgment of the umpire or of the said Operators' Committee as hereinabove set out that any supplemental or ancillary order shall become necessary the facts supporting the necessity therefor and the reasonableness thereof shall be reported to the Commission for approval.

15

That after the making of said order aforesaid the said umpire and the said Operators' Committee acting together and by agreement between the said umpire and the said Operators' Committee hereinabove named, it was agreed that no persons should be allowed to produce oil in said oil field of more than eight and one-thirds percent of the amount which any well or wells would produce at full capacity and the said Operators' Committee and the said umpire demanded of this petitioner as the operator of said well aforesaid that he not produce the same more than eight and one-thirds days out of every one hundred days; and that for the ninety-one and two-thirds days the well should be comp-etely shut in and not allowed or permitted to produce any oil whatsoever; and said operators in a meeting held at the Commerce Exchange Building in Oklahoma City on August 21st, 1930, agreed to cause the production to be further reduced to five per cent of potential.

16

That under the agreement aforesaid between the respondents, Corporation Commission of the State of Oklahoma and the Operators' Committee it was agreed between the said Operators' Committee and the Respondents, Corporation Commission that the said Operators' Commission should be permitted to determine the necessity of the production of oil in the said field aforesaid and other fields in the State of Oklahoma; and that the said Corporation Commission would under the guise of the statutes aforesaid pass such orders and resolutions as was necessary to carry out the wishes of the said Operators' Committee.

[fol. 239] 17

That this plaintiff did not participate in the said meetings nor were they parties thereto, and are not now and have never been represented in the said Operators' Committee.

18

That the said Operators' Committee and each and all of the parties to said agreement by whom the said Committee was appointed are each and all owners of large and diversified oil and gas holdings in the State of Oklahoma, and own and control a large amount of crude production outside of the Oklahoma City field as hereinabove described and located in other counties of the State of Oklahoma and in other States of the United States.

19

That under the purported order of the aforesaid Corporation Commission it is provided that eighteen and three-fourths per cent of the total production of the Oklahoma City field should be allowed; that the Operators' Committee and the said umpire arbitrarily and without right changed said percentage of eighteen and three-fourths per cent to eight and one-third per cent; and have agreed among themselves to reduce same to five per cent; and that under the said order in sixteen other fields in the State of Oklahoma it was provided that they might produce fifty per cent of their oil; and in two fields it was provided that they might produce twenty-five per cent of their oil; and in five fields it was provided that they might produce eighteen and three-fourths per cent; and that thereafter the said Operators' Committee cut the percentage of allowable production in the Oklahoma City field to eight and one-third per cent.

20

That there are many oil fields in the State of Oklahoma which are now producing the full amount of oil which could be produced therein and the respondents, Corporation Commission of the State of Oklahoma has never at any time attempted to require proration in said other fields other than those included in the order hereinabove mentioned, and

that many fields are producing one hundred per cent of their potential production.

21

That each, and every and all of the oil fields of the State of Oklahoma are permitted to produce more oil than the [fol. 240] Oklahoma City field, some fields being permitted one hundred per cent and none other than Oklahoma City being reduced as low as eight and one-third per cent.

22

That under color of the said pretended order, the respondents herein are threatening to and will unless restrained by this Court deprive these plaintiffs of the use of their said property and of their management and control thereof and of the proceeds thereof and under color of said pretended order will partially if not wholly destroy the properties of these plaintiffs.

23

That under the color of said statutes of Oklahoma, the respondents are attempting to delegate to an unofficial body, to-wit: said umpire and said Operators' Committee, the right to legislate and make rules and regulations for the conduct of a legitimate business, and said respondents and said Umpire and Operators' Committee are now and have for a long period of time discriminated against a portion of the producers in said field, and are now permitting a part of said operators to produce their wells at a far greater percentage than the eight and one-third per cent which they have demanded that these plaintiffs produce their wells, and are permitting production in other fields far in excess of allowable under said order.

24

That said order of said Commission was adopted in an Ex parte hearing before said Corporation Commission and in pursuance of the agreement which had theretofore been reached between a portion of said operators and was adopted without notice thereof to these plaintiffs and others interested, and has never been published in a newspaper in this State, and in said orders said Commission attempts to

retain jurisdiction to enter additional orders without notice and Exhibit "A" hereto was so adopted.

25

That the Corporation Commission of the State of Oklahoma in the said order and in the actual practice of apparently attempting to enforce the said so-called proration order have delegated to the said umpire and to the Operators' Committee the right to make orders as to proration, to increase or decrease the allowable percentage of production and to instruct the said pipe lines and railroads engaged in Interstate Commerce who they shall take and purchase oil from or run through their pipe lines or over their [fol. 241] railroads, and the said Operators' Committee and the said umpire did make a rule or order reducing the allowable percentage in the Oklahoma City field from eighteen and three-fourths per cent to eight and one-third per cent and have demanded of these plaintiffs that they comply with said order.

26

That said Committee and said umpire have instructed the pipe lines and railroad companies engaged in Interstate and Intrastate Commerce in running of said oil from said field to refuse to purchase from or run through or over its lines any oil in Intrastate or Interstate Commerce from any operator who produces his well more than eight and one-third per cent of its production.

27

That there is a market demand at the well and wells of these plaintiffs at a price equivalent to the actual value of such crude oil, and there is a market demand for such production at such wells for the total production thereof of a value equal to the average value in the United States at retail of the by-products and refined products of such crude oil less the cost and a reasonable profit in the business of transporting, refining and marketing the same; and that these plaintiffs have not permitted waste in any manner either in its ordinary meaning or economic waste, underground waste or surface waste; that crude oil is now and has been for many months been produced in said field in far less quantities than can be cared for by the transporting and marketing facilities and market demand for such oil.

28

That in the said order of the said Corporation Commission it is not provided how the said wells in the said fields shall be prorated and the question of how the wells shall be prorated is left entirely to the discretion and demands of the Operators' Committee and said umpire in said field; that in a majority of the fields of Oklahoma the Corporation Commission has by order provided that oil wells may be permitted to flow all days but shall be pinched in the required percentage and only permitted to flow that pro rata of the potential production that is permitted under said order but said Operators' Committee and said umpire in the said Oklahoma City field have refused to permit the pinching in of said wells in said field and have and are demanding that plaintiffs shut their wells down for ninety-one and [fol. 242] two-thirds days out of each one hundred days and open the same up for eight and one-third days out of each one hundred days.

29

That in the Oklahoma City field the oil bearing strat- is of lime stone and sand and in the wells of these plaintiffs oil is being produced out of the strata of lime stone and of sand; that the sands in the wells of these plaintiffs is of very tight hard sand and the lime formation in the wells of these plaintiffs is very hard and of tight formation; that the oil being produced through the said sand and through the said lime is produced through channels or crevices in the said formation; that the oil being produced from the wells of these plaintiffs and in the said Oklahoma City field is of a paraffin base; that if said wells be shut down for any considerable period of time the lighter volatile oils in the said crude petroleum will leave the said paraffin base and the paraffin base will settle into the crevices and channels of the said sand and lime formation and will partially or totally clog the same and the production thereafter in said well will be greatly decreased, if not wholly stopped.

30

That in addition to the said orders for the production of said wells the said Operators' Committee and the said umpire have demanded of these plaintiffs that they shut their wells in completely and not produce the same at all for a

period of sixty-five days after the bringing in of said wells; the said wells being permitted to produce only for a period of twenty-four hours after being brought in and then being required to be shut in completely for a period of sixty-five days, and that too without regard to the dangers incident thereto.

31

That surrounding the properties of these plaintiffs are certain offset producing wells belonging to others in the said field and said offest wells were placed on production long prior to the time of the drilling in of the wells of these plaintiffs; and that if the wells of these plaintiffs are shut down for a sixty-five day period the offset wells to the wells of these plaintiffs during the said period will be permitted to [fol. 243] produce at full capacity for five days; that there is a very heavy gas pressure in said field and in the strata under and surrounding the property of these plaintiffs and if the offset wells be permitted to produce for five days while the wells of these plaintiffs are shut in there will be open channels and crevices in the oil bearing strata underlying said land and leading to the wells offsetting the wells of these plaintiffs, and that during said period of five days such channels in and to adjacent and offsetting wells will become clearly defined and will create such drainage channels that a great portion of the oil underlying the leases of plaintiffs will be drained from the lands from these plaintiffs and over and onto the surrounding lands and the oil coming from under the lands of these plaintiffs will be produced through and become the property of the owners of such adjacent wells; and that after such channel or drainage area has become well defined and the channels leading to the wells of these plaintiffs in said strata have become clogged, thereafter the said surrounding properties will be permitted and will recover a much larger percentage of the oil from the drainage area than would otherwise be recovered by them if all of the wells were permitted to produce at one and the same time.

32

That after the drainage area in an oil bearing strata be determined by the opening of the oil channels through the same in any certain direction to the offset wells, thereafter placing a well upon production in said area will not over-

come said well defined channels and the wells to which said well defined channels lead will recover a much larger percentage of the oil out of the common producing strata than will the last named well.

33

That the defendants herein and said Operators' Committee and the said umpire have demanded of these plaintiffs that their wells be immediately shut down for sixty-five days after bringing the same in and that thereafter the said wells be shut down for ninety-one and two-thirds days out of each one hundred days succeeding and the said defendants and each of them herein have threatened to and will unless prohibited by this Court attempt to enforce the said demands and have threatened to and will unless prohibited by this Court attempt to take charge of said properties and divest these plaintiffs of the control, possession and management thereof and thereafter manage the same themselves or through its appointed agent in accordance with the [fol. 244] wishes and dictates of the Operators' Committee and the umpire.

34

That during all of the period of time of the pretended proration orders of the Corporation Commission of the State of Oklahoma, for the past twelve months the said orders have attempted to be enforced against certain individuals; and other favored individuals and operators have been permitted without molestation to produce their proration as they saw fit; that the said respondents herein have taken no action whatsoever against any operator in the State of Oklahoma for violation of the said pretended proration orders, notwithstanding the fact that it is well known to the respondents herein that the said orders have been violated indiscriminately by a large number of operators in all of the prorated fields in Oklahoma; that the defendants have been given knowledge of a large number of specific violations in prorated fields in the State of Oklahoma in violation of the said pretended orders of the said Corporation Commission and there has been no attempt to enforce said orders against such said favored individuals or operators.

35

That in the Oklahoma City field a large number of the operators are now and have been for many months past been violating with impunity the proration orders in said field and the Corporation Commission has taken no steps whatsoever to enforce the said orders as against said operators.

36

That if one of the said operators so violating the said orders who was a party to the agreement hereinabefore mentioned and by whom the Operators' Committee hereinbefore referred to was appointed no action is taken to enforce proration but each and every producer of oil in the Oklahoma City field who does not belong to said combination has been informed that he will not be permitted to produce any oil contrary to the provisions of the said order and/or contrary to the rules by the said Corporation Commission and/or contrary to the dictates and demands of the said umpire and said Operators' Committee.

37

That these plaintiffs have not been and are not represented on said Operators' Committee and did not agree to and with the producers forming said Committee and the [fol. 245] respondents herein have permitted a large number of said operators so represented on said committee to produce their properties and violate the said orders, but have advised these plaintiffs that any infraction of the rules of said Operators' Committee or of the rules of the said umpire or of the orders of the Corporation Commission by these plaintiffs will immediately be met by an attempt to take over and take charge of the properties of these plaintiffs and run the same under the orders of the said umpire, the said Operators' Committee and the said Corporation Commission.

38

That the defendants intend to and will unless restrained by this Court carry out the said threats and will attempt to take charge of the property of these plaintiffs unless these plaintiffs will produce their properties in accordance with

the wishes and dictates of the Operators' Committee and said umpire.

39

That if said properties be shut down or if possession thereof be taken by the respondents herein or by any other persons at the instigation or request of the respondents herein, their agents, servants, and employees the total value of the said property will be destroyed; that possession of said properties will be taken in the name of the State of Oklahoma without making any bond whatsoever for the protection of the plaintiffs in their said property rights, and should these plaintiffs finally win in said action and said properties are destroyed, these respondents would be wholly without recourse.

40

That the damage to these plaintiffs would be in excess of $100,000.00 by the shutting of said properties, or taking same over by Respondents; that said loss would be irreparable, and plaintiffs have no adequate remedy at law.

41

That the shutting in of said wells, or taking possession thereof by the respondents is wholly without authority of law, and if same be accomplished it will be the taking of private property of these plaintiffs without due process of law, and if said wells of plaintiffs be shut down and thereby destroyed, this plaintiff will be mulcted in large damages at [fol. 246] the suit of the owners of the royalty interests in said wells.

42

That in truth and in fact no hearing whatsoever was had before the Corporation Commission of the State of Oklahoma prior to or at the time of the making of said order, but that the said order was made by the defendants in this action as a result of and in pursuance of the said agreement which had been entered into by the Operators' Committee of said field; but that the respondents herein are now assuming to act as the Corporation Commission of Oklahoma and is assuming to exercise jurisdiction and authority and apply Judicial force; that said respondents as such purported Corporation Commissioners are assum-

ing to exercise jurisdiction of the petitioner herein under the said order and are threatening and will unless prohibited by this Court attempt to render said order effectual by contempt proceedings against petitioner herein and/or by the filing of Court proceedings against petitioner herein seeking the appointment of a receiver of the operating properties of your petitioner, and unless prohibited by this Court the respondents will proceed to try the same and enter final judgment therein.

43

Your petitioner represents and shows to the Court that the defendants herein are attempting to make an unauthorized application of Judicial force and are wholly without jurisdiction over said matter, and the parties hereto.

44

That said orders are void for the reasons as hereinabove set forth and for the additional following reasons, to-wit:

(a) That petitioner was not a party to said action, did not appear and participate therein and no notice to and/or no service of process was had upon your petitioner, and said respondents have no jurisdiction of this petitioner.

(b) That under Sections 7954 Et Seq. of the Compiled Oklahoma statutes of 1921, the Corporation Commission of the State of Oklahoma is given no authority whatsoever (even if said Sections be valid) further than to prevent the waste of crude petroleum in the State of Oklahoma.

[fol. 247] (c) That in said order the respondents did not attempt to determine the actual value of the crude oil in the Oklahoma City field, and no investigation has been had by the Commission to determine the valuation of such crude oil or petroleum.

(d) That the purported orders and the orders hereinabove set forth had never been published in any newspaper in the State of Oklahoma either of general circulation or otherwise.

(e) That there is absolutely no authority under the law giving the Corporation Commission of the State of Okla-

homa jurisdiction to close down for any length of time any producing oil wells in the State of Oklahoma.

(f) That if said act of the legislature as hereinabove stated be valid then the only authority given to the Corporation Commission to regulate the production from any wells is that if the full production from any common source of supply can only be obtained under conditions constituting waste as therein defined, then any person, firm or Corporation having the right to produce oil from any such common source of supply may take therefrom only such proportion of such crude oil and petroleum that may be produced therefrom as the production of the well or wells of any such person bears to the total production of such common source of supply and no determination of such percentage has been had.

(g) That no hearing whatsoever has been had to determine the production from the well or wells of this plaintiff, nor to determine the amount which this petitioner would be entitled to take from a common source of supply or such proportion as his production bears to the total production of such common source of supply.

(h) That said orders are not uniform throughout the State.

(i) That said orders are contrary to the laws of the United States relating to commerce;

(j) That said Corporation Commission is attempting legislative and judicial prerogatives and same are not conferred by Art. 8 of the Constitution.

45

That it is impossible to say for certain, but plaintiff believes and therefore alleges that his production herein in [fol. 248] the wells belonging to this plaintiff as hereinabove set forth, do not come from the same common source of supply as the majority of the other wells attempted to be regulated in said order in the Oklahoma City field.

46

That the respondents herein have commenced to and will unless prohibited by this Court proceed under Section 7961

of the Compiled Oklahoma Statute- for contempt claiming that this petitioner has violated the said act of the said legislature when in truth and in fact the same is an application or attempted application of judicial force to make this petitioner comply not with the laws of the State of Oklahoma, but with the rules and regulations of the umpire and the Operators', Committee in said field.

47

That in addition to said penalties if this respondent violates the said rules and regulations of said umpire and Operators' Committee and the rules and regulations of the said Corporation Commission, and the terms of the said orders hereinabove set forth, then the respondents herein will unless prohibited by this Court attempt to place the operating properties of this petitioner in the hands of a receiver at a suit brought by the direction of the respondents herein through the Attorney General of the State of Oklahoma.

48

That under Section 2, of Article 2 of the Constitution of the State of Oklahoma, all persons have the inherent right of enjoying the gains of their own industries but the respondents herein through the unauthorized application of judicial force are threatening to and will unless prohibited by this Court shut down and cause the complete and total destruction of the oil wells belonging to the petitioner herein, which oil wells constitute the gains of the industries of your petitioner herein.

49

That under Section 7 of Article 2 of the Constitution of Oklahoma, and the Constitution of the United States, it is provided: That no person shall be deprived of life, liberty or property without due process of law and your petitioner avers that there is no law in the State of Oklahoma permitting or authorizing or giving jurisdiction to the Corporation Commission of the State of Oklahoma to close down absolutely any producing oil well in the State of Oklahoma, [fol. 249] and your petitioner avers that the orders attempted to be made herein are unconstitutional and contrary to the constitution of the State of Oklahoma, and

contrary to the constitution of the United States of America.

50

Your petitioner further shows that the said purported act of the Legislature, being H. B. 168 S. L. 1915 P. 28 is unconstitutional and void for the following reasons, to-wit:

(1) That the act and the title of said act embraces more than one subject, and said contents are not expressed in the title of said bill.

(2) That the title of said act is vague and uncertain and idefinite.

(3) That the said act itself is an attempted delegation of legislative powers to the Corporation Commission of the State of Oklahoma by the Legislature of this State, and not in harmony with Article 9 of the Constitution of Oklahoma.

(4) That in the said act private property is taken and destroyed or authorized to be taken and destroyed without any process of any Court whatsoever.

(5) That said act is contrary to the constitution of the State of Oklahoma and denies or places within the power of the Corporation Commission of the State of Oklahoma to deny the right of all persons to the enjoyment of the gains of their own industry.

(6) That said act further attempts to place within the jurisdiction of the Corporation Commission of the State of Oklahoma, the right to arbitrarily determine the amount of crude oil which may be taken through any well from any particular oil bearing strata without any way of determination of the amount of crude oil underlying such particular tract of land.

(7) That said act in all of its provisions attempts to go further than to prohibit waste of natural resources and to such extent is beyond the power of the legislature of the State of Oklahoma to regulate or interfer- with.

(8) That Section 9 of said Act is not covered in the title of said act and is unconstitutional and void.

[fol. 250] Your petitioner further shows to the Court that if its wells herein be shut down for a period of sixty-five

days, that the value thereof and its investment therein will be practically totally destroyed; that your petitioner is not a party to and has no right of appeal of said order of the said Commission; that no remedy by appeal or any other method is open to this petitioner and if open such appeal would not stay such orders pending such appeal; that unless this cause can be speedily and immediately heard, your petitioner is wholly without remedy and that any other relief save and except the writ of prohibition is inadequate and insufficient in that this petitioner can not have any cause of action speedily determined and during any period of determination its properties would be destroyed; that no other Court in the State of Oklahoma under Section 20 of Article 9 of the Constitution of this State has any jurisdiction to review, reverse, or annul any act of the Corporation Commission or to suspend or delay the execution or the operation thereof or to enjoin, restrain or deter the Commission in the performance of its official duties; and that no other Court would assume jurisdiction in this matter; that unless prohibited the said Corporation Commission will proceed in said matter and make such unauthorized application of judicial force and this petitioner will suffer an irreparable loss if it fails to comply with said order; and its properties will be totally destroyed if it does comply with said orders; and that your petitioner has no adequate remedy at law.

Wherefore, premises considered, petitioner prays that this Honorable Court issue herein its alternative writ of prohibition, directed to the respondents herein, commanding them and each of them to desist and refrain from any proceedings in an attempt to enforce the said orders or any other orders of the Corporation Commission in said matter or of the rules and regulations of said Operators' Committee or of the said umpire, and to desist and refrain in said capacity from exercising further jurisdiction over the person or property of your petitioner in this action; that said alternative writ be made returnable during term time of this Court, and be set for hearing; and that upon a final hearing thereof that the said purported law and orders under which the said Corporation Commission is attempting to proceed be declared unconstitutional and void, and that the alternative writ of prohibition herein be made

[fol. 251] permanent; for costs and for all other and proper relief.

John Head, Attorney for Petitioner, C. C. Julian Oil & Royalties Company, 614 Cotton Exchg. Bldg.

(Verification by C. C. Julian, by agreement not included herein.)

(Exhibits attached thereto form part of Plaintiff's Exhibit #33, and are not therefore duplicated.)

(b) Response.

[fol. 252] Filed in Supreme Court of Oklahoma Sep. 2, 1930. Jessie E. Moore, Clerk.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 21640

C. C. JULIAN OIL & ROYALTIES COMPANY, Petitioner,

vs.

FRED CAPSHAW, E. R. HUGHES and C. C. CHILDERS, Corporation Commissioners of the State of Oklahoma, Respondents

RESPONSE

Come now Fred Capshaw, E. R. Hughes and C. C. Childers, Corporation Commissioners of the State of Oklahoma, and for their Response to the Alternative Writ of Prohibition issued herein on the 28th day of August, 1930, say:

I

That the facts stated in the "Petition for Writ of Prohibition" are insufficient to entitle the petitioner to the relief demanded.

II

The respondents now and at all times hereafter without waiving, but reserving and saving all objections to the many errors, uncertainties, imperfections, insufficiencies, irrelevancies and impertinences in the petition contained,

for response and answer thereto, or unto so much or such parts thereof as respondents are advised that it is material or necessary to make answer to, say:

1. That they deny all and singular, each and every, allegation of fact in said petition contained, except such as may be hereinafter expressly admitted.

2. Respondents admit that they are the duly elected, qualified and acting Corporation Commissioners of the State of Oklahoma, and as such constitute the Corporation Commission of the State of Oklahoma.

3. Prior to the 23d day of June, 1930, the said Commission, pursuant to authority vested in it under the constitution and laws of the State of Oklahoma, made and entered certain orders and prescribed certain rules and regulations for the prevention of waste of crude oil in the Oklahoma City pool, and from time to time it entered its further and additional orders and prescribed further and additional rules and regulations for the prevention of waste of crude oil and natural gas in said State in the various pools, including the Oklahoma City pool.

On the said 23d day of June, 1930, one Wirt Franklin made application to said Corporation Commission, by written petition filed in cause No. 10146, then pending before the Commission, for further rules and regulations to prevent the waste of petroleum in certain oil and gas fields in the State of Oklahoma, a true photostat copy of which petition is hereto attached marked Exhibit "A", and made a part hereof.

[fol. 253]. Pursuant to the express Statutes of the State of Oklahoma conferring jurisdiction upon the Corporation Commission to hear and determine the same, the said Commission received and filed said petition and entered its orders setting the same for hearing at its office on June 30th, 1930, at 10:00 A. M., and directed that notice thereof be given as provided by law. A true photostat copy of said order is hereto attached, marked Exhibit "B", and made a part hereof.

Pursuant to said order, and the Statutes, reasonable notice of said hearing was given to all persons and classes interested therein by publication in the "Oklahoma News",

a newspaper having general circulation in the State, for five consecutive days, on to-wit: the 24th, 25th, 26th, 27th, and 28th days of June, 1930, and due proof of such publication was filed with said Commission prior to said hearing. A true duplicate copy of said notice and proof of publication is hereto attached, marked Exhibit "C", and made a part hereof.

Although no particular person, firm, or corporation was complained against, and personal service of notice was not required, a reasonable notice in writing was served personally on the petitioner herein on the 23rd day of June, 1930. A true photostat of such notice so served on petitioner being hereto attached, marked Exhibit "D", and made a part hereof.

Prior to the said hearing, proof of such personal service on the petitioner herein, and others, was filed with said Commission. A true photostat copy of such proof of service being hereto attached, marked Exhibit "B", and made a part hereof.

On the said 30th day of June, 1930, at the time and place prescribed in said order, and specified in said notices, the said petition was heard by said Commission; evidence was introduced, and after such hearing and consideration of the evidence, the said Commission duly and regularly made its findings of fact upon the evidence adduced, and promulgated certain reasonable rules and regulations for the enforcement of the statutes of the State of Oklahoma, prohibiting waste of crude oil or petroleum, and to that end regulating the taking of crude oil or petroleum from the several common sources of supply in the State as to prevent the inequitable or unfair taking from such several common sources of supply, and to prevent unreasonable discrimination in favor of one common source of supply as against another: all as set forth in the order, No. 5189, adopted and promulgated on that date by said Commission, a copy of which is attached to the petition herein, marked Exhibit "B".

3A. Thereafter on the 16th day of July, 1930, one Wirt Franklin made application for modification of said order No. 5189, by written petition then filed with said Commission, a true photostat copy of which is hereto attached marked Exhibit "F", and made a part hereof.

On said date the said Commission made and entered its order setting said application for hearing at the office of the Commission on Tuesday, the 22d day of July, 1930, at 10:00 o'clock A. M. A true photostat copy of which order is hereto attached, marked Exhibit "G", and made a part hereof.

[fol. 254] Reasonable notice of such hearing was given to all persons and classes interested therein by publication in the "Daily Oklahoman", a newspaper having general circulation in the State, for five successive days, to-wit: July 17, 18, 19, 20 and 21, 1930, and due proof of such publication was filed with said Commission prior to the said hearing. A true duplicate copy of such notice and proof of publication thereof is hereto attached, marked Exhibit "H", and made a part hereof.

Although no particular person, firm or corporation was complained against, and personal service of notice was not required, a reasonable notice in writing was served personally on the petitioner herein on the 17th day of July, 1930. A true photostat copy of such notice is hereto attached, marked Exhibit "I", and made a part hereof.

On the date fixed for the said hearing, proof of such personal service on the petitioner and others was filed with the Commission. A true photostat copy of such proof is hereto attached, marked Exhibit "E", and made a part hereof.

On said 22nd day of July, 1930, the Commission heard said petition, and the evidence adduced in support of the same, and upon consideration thereof made its findings of fact from such evidence, and duly and regularly promulgated certain further reasonable rules and regulations, modifying its then existing rules and regulations for the enforcement of the statutes of the State of Oklahoma, prohibiting waste of crude oil or petroleum, and to that end regulating the taking of crude oil or petroleum from the several common sources of supply in the State, as to prevent the inequitable or unfair taking from such several common sources of supply, and to prevent unreasonable discrimination in favor of one common source of supply as against another: all as set forth in the order, No. 5246, adopted and promulgated on the 24th day of July, 1930, by said Commission, a copy of which is attached to the petition herein, marked Exhibit "A". It was provided in said

orders that jurisdiction of the cause was retained by the Commission and notice given that supplemental and ancillary orders would be made therein from time to time, as required by new developments, and as instructions to the umpire and operators' committee.

4. That said order, No. 5246, was in force and effect from the date of the entry thereof until the 31st day of August, A. D., 1930, and the said order No. 5189, except insofar as it was modified by order No. 5246, has been in force and effect since the date of the entry thereof, and, except as further modified by order entered August 30, 1930, after due notice and hearing, is at this time in force and effect; and by the terms of said orders it was found, determined and ordered by said Corporation Commission, among other things, as follows:

(a) That there was at the time of the issuance of said orders, a grave condition of over-production of crude oil or petroleum in the State of Oklahoma, and a consequent actual and threatened condition of waste of such petroleum, and that said condition would continue through July, August and September 1930, and that by reason thereof it was necessary to set up a comprehensive plan of curtailment and proration of crude oil production in the flush-production pools of said State, including the Oklahoma City pool, in order to prevent economic waste, underground waste, surface waste, and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands.

[fol. 255] (b) That in order to curtail the production of crude oil in a manner to prevent the commission of waste, it was necessary to enforce proportionality of taking of crude oil from the wells and leases in the flush and semi-flush areas, including the Oklahoma City pool, and that unless such proportionality be required, injustice would result as between producers in the same pool in that drainage would occur from one lease to another and an undue proportion of the gas pressure in the oil containing formations would be utilized by some operators to the detriment of others and injustice as between operators in different pools and unreasonable discrimination would arise as between pools.

(c) That each person, firm or corporation having the right to drill into and produce oil from any of the pools or areas and extensions thereof that were covered by said order might take from such pool or area and extensions thereof, only such proportion of all crude oil and petroleum that might be produced therefrom under said order as the production of the well or wells of such person, firm or corporation in said pool or area bore to the total potential production of such pool or area; and that in the case of each such pool or area the umpire and the operators' committee appointed by said Commission, for said pool or area, should determine whether the production should be curtailed on a time basis or on the basis of a percentage of potential daily production, but that such decision shall be reported by the umpire to said Commission for approval, and in no event should any pool and its extensions be permitted to produce more than its allowable output as fixed by said order.

(d) That beginning July 15, 1930, and continuing until and including August 31st, 1930, (and by the order of August 30, 1930, continuing until September 30, 1930 (the allowable production of all wells in the Oklahoma City pool should be that proportion of their potential production that the reasonable market demand from the pool as a whole should bear to the potential production of the pool as a whole; provided, that the maximum allowed production should be 18¾% of potential production; and, provided further, that whatever demand for petroleum from the Oklahoma City pool that might exist should be prorated and allocated among all the producing leases; that in case the reasonable market demand should at any time be less than 18¾% of the potential production the umpire and operators' committee should determine such percentage production as would allow a production equal to said reasonable market demand, and report the same to the Commission.

(e) That to establish equality between producing wells and drilling wells, each well then drilling in any of said areas, or which might be commenced in said areas or in any new areas prior to September 30, 1930, should take a delay prior to being brought into production, equal to the accumulated shut-in time and accumulated equivalent time resulting from pinching of producing wells from the beginning

of the proration period of each pool, said period of delay to be computed in each instance after allowing seven (7) days from the cement to set; provided the maximum shut-in time in each of said pools should be according to the following schedule:

Area	No. of days cement to set	No. of days of open flow for test	Days shut down	Total
Oklahoma City	7	1	57	65

(and other pools as shown by said orders.)

[fol. 256] (f) That all purchasers and carriers of oil in the State of Oklahoma be and they were forbidden to purchase or carry oil produced in violation of such orders of the Commission: all as is more particularly shown by Exhibit "A" and "B", attached to the petition.

That in addition to a chief oil and gas conservation agent, and certain of its other agents, the said Commission appointed certain additional agents for the enforcement of the aforesaid conservation proration orders, namely, Ray M. Collins as chief umpire for the State, and an umpire and operators' committee for each of the oil pools affected by said orders, the umpire for the Oklahoma City pool being Otto Bradford, and the operators' committee for said pool being M. J. Kirwan, Wirt Franklin, Glenn Harroun, J. S. Sidwell, and R. B. Roark, all of whom were appointed with the consent of the Governor of said State, and respondents allege that said agents of the Commission accepted their several appointments and have been, since the date of said orders, the duly appointed, qualified and acting agents of said Commission for the enforcement of the said orders.

Respondents state that the Commission thereafter found that the potential production of the producing oil wells in the Oklahoma City pool is and has been since prior to the date of the entry of the said orders of June 30, 1930, and July 24, 1930, far in excess of the transportation and marketing facilities and reasonable market demand for crude oil in said field, and the transportation and market facilities and reasonable market demand for crude oil in said field has been less than the maximum allowed production of

18¾% of the potential production of said field as fixed by said order of July 24, 1930, and that the said demand for petroleum for said pool was for but 8⅓% of the total potential production thereof, and the said umpire and operators' committee for said pool determined that 8⅓% of the total potential production was the allowable production from said pool, as provided in the said orders, rules and regulations of the Commission, and reported in writing their finding to the said Commission, and the said Commission made and entered its order fixing said percentage of said potential production as the allowable production from said pool; also that said umpire and operators' committee for said Oklahoma City pool determined upon the time basis as the best and most equitable basis for the production of oil from said Oklahoma City pool and reported said determination to the said Commission, which made and entered its order approving the same; a copy of which report, and the approval thereof by the Commission is hereto attached, marked Exhibit "K", and made a part hereof. Thereby each operator in said field was required to close in each of its wells except for one day in each twelve days, and has been and is permitted to operate same at full capacity for one day of twenty-four hours each out of every twelve days, beginning after the expiration of the delay required by said order to be taken after the completion of each such well, save only for one day of open flow test thereof, as provided in said order. Respondents further show to the Court that in said Oklahoma City pool each newly completed well, if said order be complied with, must take the maximum shutin time of sixty-five days after the final string of casing has been set and cemented, except for one day during said period.

5. Respondents say that the Commission was fully authorized by the constitution and laws of the State of Oklahoma to make and enter the said orders, and promulgate said rules and regulations, and that the same were entered and promulgated in proper proceedings, properly instituted before the Commission, and after hearings upon such notice as was required by law, and the same were and are a valid exercise of the legislative power of the State.

[fol. 257] Respondents deny that the ratios as fixed by said orders were arbitrary, but state that the same were

based upon evidence adduced at the hearings showing the necessity therefor, and the reasonableness of the ratios adopted.

Respondents expressly aver that said orders were intended and said rules and regulations promulgated for the purpose of preventing waste.

The respondents further say that the said Corporation Commission found that during the period covered by the said orders and rules and regulations, the full production from the common source of supply known as the Oklahoma City pool, as well as other pools affected by said orders, could only be obtained under conditions cons-ituting waste as defined in the statutes of the State of Oklahoma; that under the said orders, rules and regulations, the petitioner, as well as each person, firm and corporation having the right to produce oil from the common source of supply, known as the Oklahoma City pool, was and is permitted to take such proportion of all the oil that may be produced from such pool or common source of supply without waste, as the production of any well or wells of the petitioner bears to the total production of such pool or common source of supply.

Respondents have no knowledge, and therefore deny that a large number of owners of the oil wells in any of the oil fields of the State of Oklahoma, entered into an agreement and formed a combination in the form of a trust or conspiracy, and agreed among themselves that they would cause to be taken such action as would restrain the amount of oil shipped by railroad and pipe lines in intrastate and interstate commerce or that it was agreed that an operators' committee should be formed which would determine the amount of oil which could be produced by each and every operator in the said field and the amount of oil which should be run through the pipe lines, or that the purpose of the formation of said committee was to restrain and withhold a portion of the commerce and trade through and from the State of Oklahoma, and to the several states of the United States. Respondents state that the only operators' Committees of which it has any knowledge are those appointed by the Commission as its Agents for the sole purpose set forth in said orders.

Respondents expressly deny that any operators' committee appeared before the Commission and petitioned it

to take jurisdiction of said action for the purpose of restraining the trade among the several states under the guise of any law of the State of Oklahoma.

Respondents state that the jurisdiction of the Commission was invoked in the manner and for the purpose hereinbefore set forth, and the orders of the Commission were made upon facts found from the evidence introduced at the hearings, and for the purpose of preventing waste of oil and gas as prohibited by the laws of the State of Oklahoma, and not for the purpose of restraining trade.

Respondents admit that the Commission found as a matter of fact that it was necessary to curtail the output of crude petroleum from certain pools and fields in the State of Oklahoma and state that the Commission found that it was necessary so to do for the reason that the full production from said pools and fields could only be obtained under conditions constituting waste as defined in the laws of the State of Oklahoma. Respondents admit that the Commission [fol. 258] found that during the period covered by said orders, not to exceed 18¾% of the potential production of the Oklahoma City pool could be had without waste as defined in the laws of the State, and that at no time could a total production be had therefrom without waste in excess of the reasonable market demand of oil produced from said pool.

Respondents say that obedient to the provisions of said order its agents, the umpire and the operators' committee, did ascertain and report to it that the reasonable total market demand of crude oil during the months of July and August from the Oklahoma City pool would not exceed 8⅓% of the total potential production of the wells in said field, and that the proportion that the owner of each well drilled into said pool would be permitted to take under the laws of the State, and said orders of the Commission was and would be 8⅓% of the potential production thereof, and that to limit each well to such percentage, the same should be allowed to produce to its full capacity for one day of twenty-four hours in each twelve days, and the Commission having found that such percentage was correct thereupon approved said report and ordered as hereinbefore set forth.

Respondents expressly deny that there is or was at any time any agreement between them and any operators' committee that the operators' committee should be permitted

to determine the necessity of the production of oil in any of the several oil fields, and that the Commission would pass such orders and resolutions as were necessary to carry out the wishes of such operators' committee.

Respondents state that each and every provision of the orders and rules of the Commission were made in good faith and in the independent exercise of the judgment of the Commissioners based upon facts found from competent evidence, for the sole and only purpose of carrying into effect the laws of the State of Oklahoma, and under the authority thereof.

Respondents deny that under the orders, rules and regulations of the Commission there is any unreasonable discrimination in favor of one common source of supply as against another and allege that if there was the remedy for the correction thereof is by appeal or by application to the Commission for modification, as provided by law.

Respondents deny that they are threatening to, or will deprive the petitioners of the use of their property, and of the management and control of the same, or the proceeds thereof, or will partially, if not wholly, destroy the properties of the petitioners.

Respondents deny that they or the Commission have delegated, or are attempting to delegate to the umpire or operators' committee the right to legislate or make rules and regulations for the conduct of legitimate business or confer upon the umpire and operators' committee any authority not expressly provided by law.

Respondents expressly deny that they are now or have been discriminating against a portion of the producers of the field, or are now permitting a part of said operators to produce their wells at a greater percentage than eight and one-third per cent, or are permitting production in other fields in excess of that allowable under said orders, and deny that they have permitted their agents so to do.

Respondents expressly deny that the Commission has by its orders or in actual practice delegated to the umpire and to the operators' committee the right to make orders as to proration, or to increase or decrease the allowable proportion of production. They deny that any instructions to pipe lines or *or* other carriers have been given, other than contained in said orders.

[fol. 259] Respondents admit that there are oil fields in Oklahoma which are now producing the full amount of oil that can be produced therein, and that the Commission has not required proration there-of, and admits that under the Commission's orders, copies of which are attached to plaintiff's petition, the wells in some of the fields are permitted to produce a larger percentage of their potential production than wells in other fields, which percentages in the fields here referred to are shown in the said orders; Respondents allege that upon the evidence adduced at the hearings on said proposed orders, the Commission found that in the oil fields of the state which were not required to curtail production, that such was not necessary in order to prevent waste in such fields, for the reasons as particularly shown in paragraph numbered (g) in said order of June 30, 1930, and stated therein their reasons for not ordering the curtailment of production in said fields, which said findings and reasons are here referred to and made a part hereof; and respondents further state that the Commission found from said evidence and stated as is particularly shown in paragraphs numbered (L) and (I) of said order of June 30, 1930, that it was necessary to establish varying percentages of curtailment as between the flush and semi-flush pools in said State in order to prevent the waste of crude oil therein and to prevent unreasonable discrimination between the *the* several pools of the State, which findings and reasons are referred to and made a part hereof.

Respondents expressly deny that they have ever attempted to enforce the orders of the Commission against certain individuals only or that they have permitted favored individuals and operators without molestation to produce their proration as they saw fit. Respondents aver that proceedings have been taken against all persons, firms and corporations who within the knowledge of the respondents have been charged with a violation of said orders. Respondents further expressly deny that any operators in the Oklahoma City field are now or have been violating said orders with impunity, and aver that proper proceedings have been instituted to enforce the said orders against all who have been charged with a violation of said orders. Respondents aver that they and their agents have and will enforce the said orders, rules and regulations against all per-

sons, firms and corporations, and require them to comply therewith without favor or discrimination.

Respondents say that the several producers and purchasers and carriers of oil have been advised as to the proportion of its potential production each well should be allowed to produce under the terms of the statutes and orders of the Commission, and the amount that had been produced by each well thereunder.

Respondents deny that the wells of petitioner or other producers are endangered by shutting the same in as provided in the orders of the Commission.

Respondents say that wells offsetting the wells of petitioner, are or were required under the existing and previous orders of the Commission to remain shut down, except for one day, for sixty-five days after cementing.

Respondents deny that the petitioner will suffer any loss of oil by drainage under the operation of the orders and rules of the Commission. Respondents say that the area of the lots described in the petition as belonging to petitioner is only 10,500 square feet or less than one-fourth (¼) of an acre and that not more than 15,000 barrels of oil in place underlies the said lots and that under the operation of the orders and rules of the Commission the petitioner will recover through its well an amount of oil largely in excess of the amount in place thereunder.

[fol. 260] 6. That under the constitution and laws of the State of Oklahoma, any corporation, person or firm may be fined by the Corporation Commission, such sum not exceeding five hundred dollars, as the Commission may deem proper, for the violation of any of its rules and requirements, in contempt proceedings instituted by any citizen of the State, or other party affected by such order, by filing an affidavit with the Corporation Commission setting forth the acts of omission or failure to comply with such order or requirement. Upon filing of such affidavit or information, it is the duty of the Commission to forward to such offending Corporation, person or firm, a copy of such affidavit or information, and to issue citation to such corporation, person or firm, to answer at a time fixed in the citation, not less than *than* ten days nor more than twenty days from the date of the service of the citation.

Respondents say that on the 20th day of August 1930, one Otto Bradford filed an affidavit, with the Commission that the petitioner herein, among others, had violated the said orders and requirements of the Commission, setting forth that the petitioners had omitted and failed to comply with such order and requirement in that it had prior to August 20, 1930, kept its well on its Shepard farm in Section Fourteen (14), Township Eleven (11) North, Range Three (3) West, open and produced oil therefrom in excess of the time permitted by the order and regulation of the Commission for one day and twenty-one hours. That, as was their duty, the res-ondents issued its citation to all corporations, firms and persons complained -gainst, requiring them to answer on the 8th day of September, 1930. A copy of the citation so issued to the petitioner being hereto attached marked Exhibit "L.", and made a part hereof. That such citation has been served upon petitioner, and copy of said affidavit delivered, but return thereof has not yet been made. That the petitioner has the right to appear on said 8th day of September, 1930, and file plea, demurrer or answer, and it will be the duty and respondents will accord petitioner a full hearing thereon, and ample opportunity will be given to introduce proper evidence, and it will then be their duty and the respondents will, after completion of the evidence and argument of counsel, render such judgment as they believe is warranted by the law and evidence. That if the judgment should be adverse to the petitioner he shall have the right and will be accorded an appeal to this Court as provided by law.

Respondents say that petitioner has not appeared before the Commission and made any objection to it that is has not jurisdiction to hear and determine said complaint, nor has the alleged lack of jurisdiction been called to the attention of the Commission.

Respondents say that no other proceeding has been taken to enforce said orders, rules and regulations against petitioner, than the pending proceedings above set forth, and no other proceedings or action was or is contemplated by respondents against the person or property of the petitioner in the matter of the enforcement of the laws of the State of Oklahoma, relative to waste of crude oil, or the orders, rules and regulations of the Commission, aforesaid

made pursuant thereto. That for any action taken or contemplated by the respondents, the petitioner has available the ordinary and usual remedies provided by law.

The respondents deny that they have threatened to or that they will undertake to seize the property of petitioner and manage or operate the same. Proceedings for the appointment of a receiver can only be had in a court of competent jurisdiction, at the suit of the State through the Attorney General or any County Attorney. The respondents are without power to require the institution of such [fol. 261] proceedings by the officers named, or to control their discretion in the premises, and they have not undertaken, nor do they contemplate undertaking so to do.

Wherefore respondents pray that the Alternative Writ of Prohibition herein be quashed and vacated, and that same do not be made absolute, and for such and further relief to which they may be entitled.

J. Berry King, Attorney General; —— ——, Assistant Attorney General; E. S. Ratliff, Attorney for Corporation Commission, Attorneys for Respondents. H. H. Smith, W. C. Franklin, W. P. Z. German, Burford, Miley, Hoffman & Burford, of Counsel.

(Verification by E. R. Hughes, by agreement not included herein.)

(c) Brief of Petitioner. (By agreement, not included herein.)

[fol. 262] PLAINTIFF'S EXHIBIT 42.

No. 42, Record, p. 377

Map of area in Oklahoma City field adjacent to Morgan Stout Well No. 1.

(Here follows Plaintiff's Exhibit 42, side folio 263)

FOLD-OUT IS TOO LARGE TO BE FILMED

[fol. 264] PLAINTIFF'S EXHIBIT 43

No. 43, Record, p. 381

April overs and unders

. . . . . .

(By agreement not included herein.)

[fol. 265] No. 44

Report and recommendations of Operating Committee appointed February 25, 1931 in re Gas Conservation and Water Intrusion, Oklahoma City field, offered in evidence August 3rd, 1931, at the time of the submission of this Cause, and upon the Defendants' objection to the competency and materiality thereof, was held to be "material but not competent", to which ruling the Plaintiff was granted an exception; and thereupon, Plaintiff offered to prove the authenticity of the document by E. F. Guidinger, one of the signers thereof, who was present in response to subpœna for that purpose; that such privilege was also denied, notwithstanding Counsel for Plaintiff stated that the photostat of the original document had come into their possession since the trial of the case and before the day for submission thereof upon argument;

To all of which ruling the Plaintiff was granted an exception, and now renews its contention that the data contained in said Exhibit #44 should be received by this Honorable Court and consideration given thereto, in the determination of this cause:

That said document as so offered in evidence, was in words and figures as follows:

[fol. 266] PLAINTIFF'S EXHIBIT NUMBER 44

Okla. City, Okla., March 11, 1931.

Mr. Wirt Franklin, Chairman Oklahoma City Operators, Oklahoma City. Oklahoma.

Subject: Report and recommendations of Operating Committee appointed February 25, 1931 in re gas conservation and water intrusion, Oklahoma City field

DEAR SIR: Pursuant to a call to Mr. Otto B. Bradford, the Oklahoma City Operators met in the Chamber of Commerce rooms, Oklahoma City, on February 25, 1931, and

adopted a resolution presented by Mr. H. L. Briggs, of the Coline Oil Corporation, creating an Operating Committee for the purpose of studying the problems of gas conservation and water encroachment in the Oklahoma City Field and reporting back to a meeting of Operators on March 11, 1931. The Committee appointed by you consisted of:

Representative	Company
Mr. Kirwan, Chairman.	Indian Territory Ill. Oil Company.
Mr. Paschal	Coline Oil Corporation
Mr. McWilliams	Skelly Oil Company
Mr. Guidinger	Phillips Petroleum Company
Mr. McKee	Cromwell-Franklin Oil Company
Mr. Brauchli	Anderson-Prichard Oil Corporation
Mr. Thomas	Thomas B. Slick Companies

Abstract of Report

The Committee recognizes that the Simpson formation in the Oklahoma City Field is predominantly an oil-bearing [fol. 267] formation, and therefore, recommends that all wells producing from this formation be classified as oil wells; provided however, that wells with gas-oil ratios in excess of 20,000 cubic feet of gas per barrel of oil be classified as "Combination Oil and Gas Wells". Wells classified as "Combination Oil and Gas Wells" shall have the same limitation in regard to oil production as oil wells; provided further, that said "Combination Oil and Gas Wells" shall have an additional limitation as to the amount of gas they are permitted to produce. The Committee recommends the repair of certain wells, producing from the Simpson formation, to reduce their gas volume; and also the repair of certain wells producing from the Simpson or lower formations, in which the Prue sand is exposed. The Committee recommends the taking of a gas volume of each well when the oil potentials are taken in April. Suggestions are made relative to the plugging off of water that may be found in the base of the Johnson sand or in formations below the Johnson sand. No recommendations are made relative to the plugging off of water in Siliceous lime wells, excepting wells in which the Prue sand is exposed below the casing.

The Committee, assisted by Mr. John E. Van Dall, of the Sinclair Oil and Gas Company, and others, was in session three and one-half days, with full attendence, studying the problems.

Based on information furnished by various members of the Committee, the gas-oil ratio of a majority of oil wells [fol. 268] in the Oklahoma City Field were found to be as follows, and are believed to be fairly representative of conditions in the Oklahoma City Field:

Gas-oil ratio	No. wells	Oil, potential barrels	Gas volume, M cu. feet
Less than 1,000	167	3,158,684	2,130,630
1,000– 2,000	115	1,290,282	1,707,159
2,000– 3,000	58	533,762	1,297,266
3,000– 4,000	41	394,554	1,336,288
4,000– 5,000	18	116,374	517,350
5,000– 6,000	14	106,736	584,543
6,000– 7,000	14	103,033	668,269
7,000– 8,000	15	92,915	678,325
8,000– 9,000	4	18,846	164,756
9,000–10,000	12	67,209	639,590
10,000–20,000	31	92,933	1,313,656
Above 20,000	50	55,028	3,038,612

The above tabulation shows that there are fifty oil wells producing with ratios over 20,000 cubic feet of gas per barrel of oil. In addition to this number of wells, there are fourteen wells producing from the Simpson formation that have been temporarily classed as gas wells by the Corporation Commission on account of their relatively large volumes of gas and small oil production, this makes a total of sixty-four wells producing from the Simpson formation with gas-oil ratios in excess of 20,000 cubic feet per barrel.

The Committee is of the opinion that wells producing [fol. 269] from the Simpson formation and which are now classified as gas wells should be re-classified by the Corporation Commission as oil wells.

After considering such factors as the number of producing sands, the varying depths that wells are cased stratigraphically, the geologic structure, number of sands pene-

trated by various wells, etc., the Committee adopted the following resolution, Mr. Paschall registered "Not Voting" on this resolution:

Resolution

"In the Oklahoma City Field, all wells producing from the Simpson formation shall come under one of two classificational,

"(1) A well producing not more than 20,000 cubic feet of gas per barrel of oil shall come under the present proration plan for oil wells.

(2) A well producing in excess of 20,000 cubic feet of gas per barrel of oil shall be termed a "Combination Oil and Gas Well" and shall only be allowed to produce 20,000 cubic feet of gas per barrel of oil, unless the gas produced above this amount can be usefully used. If the excess gas can be usefully used, the well shall be allowed to produce in addition to its 20,000 cubic feet of gas per barrel of oil, the same percentage of its open flow gas capacity as an oil well is permitted to produce of its oil potential. In no event shall any well produce more oil than the alloted amount fixed by the allowable percentage of its potential."

[fol. 270] The Committee considered wells that are cased high in the upper Simpson formation in which some of the sands below the casing are largely gas bearing. Some of these wells produce large volumes of gas from the upper sands, but also produce a large amount of oil from lower sands, such as the Johnson sand. These wells, although their ratio may be less than 20,000 cubic feet per barrel, may be greater wasters of gas by volume than some of the wells where the gas-oil ratio is in excess of 20,000 cubic feet per barrel. The Committee is not prepared at this time to make definite recommendations for repair work of these wells, as it is believed that the wells which produce gas in excess of 20,000 cubic feet per barrel of oil should be worked on first. Provided repair work is successfully done on wells making more than 20,000 cubic feet of gas per barrel of oil, then the wells that produce large volumes of gas with a gas-oil ratio less than 20,000 cubic feet per barrel and which have upper gas-bearing sands exposed may be further studied in view of recommending repair work.

In connection with the repair of wells producing gas in excess of 20,000 cubic feet per barrel of oil, or wells producing large volumes of gas from upper exposed sands which are predominantly gas bearing, the Committee desires to specifically point out that the running of casing to reduce the gas volume or gas-oil ratio can only be successfully done in such wells that have formations predominantly gas-bearing exposed below the casing; for example, the Committee doubts the practicability of attempting to materially reduce [fol. 271] the gas-oil ratio or gas volume by cementing casing in a well from which the gas and oil come from a single sand. In wells where no remedial repair work is recommended and which produce in excess of 20,000 cubic feet per barrel of oil, the well should take the "Combination Oil and Gas Well' classification and its gas production limited according to the terms of the resolution aforementioned.

The Committee has examined the log records of all wells producing gas in excess of 20,000 cubic feet per barrel of oil and believes that fifteen wells can be repaired by running additional casing or plugging back to materially reduce the gas-oil ratio. No recommendations for repair are made at this time for the remaining thirty-five wells with ratios in excess of 20,000 cubic feet per barrel. A string of tubing in such wells may reduce their gas volume or gas-oil ratio.

These two classes of wells together with their oil production, gas volume and gas-oil ratio are tabulated according to their classification.

Class No. 1 are wells that probably can be repaired by plugging back or running casing.

Class No. 2 are wells that are high structurally and unless the operator reconditions them, they should be classed as "Combination Oil and Gas Wells."

[fol. 272]

Class No. 1

Wells with Gas-Oil Ratios Over 20,000 Cu. Feet per Barrel
Repair Recommended: (1) Bottom Plug or (2) Additional Casing

Company	Lease	Well No.	Gas volume, M cu. feet	Oil prod., bbls.	Gas-oil ratio
Cromwell-Franklin-I. T. I. O.	Trosper Park	24	148,696	3,306	44,977
Cromwell-Franklin	Trosper Park	32	110,000	348	316,000
Phillips	Jones Comm.	1	93,000	3,044	31,000
Slick-I. T. I. O	Dennis	1	210,000	5,476	38,356
Sub-total		(4 wells)	501,696	12,174	
	Repair Recommended: Additional Casing				
Anderson-Prichard	Gibbons	1	95,000	2,628	36,000
Coline	Clauer	10	36,600	836	43,900
I. T. I. O.	Coppinger	3	49,916	1,590	31,500
I. T. I. O.	H. W. Jones	4	76,720	2,100	36,500
I. T. I. O.	Lemmon	3	75,267	2,268	33,186
I. T. I. O.	Spillman	4	136,159	2,520	54,000
I. T. I. O.-Cromwell-Franklin	B. Johnson	7	66,500	630	106,000
Marco	Holder	1	40,000	1,248	32,050
Slick	Baker	1	82,500	1,430	57,700
Slick	Danareuther	1	29,200	773	37,700
Slick	Townsend	1	82,000	1,934	42,394
Sub-total		(11 wells)	769,862	17,957	
Total		(15 wells)	1,331,558	30,131	

[fol. 273]

Class No. 2

Wells with Gas-oil Ratios Over 20,000 Cu. Ft. per Bbl.
Wells are High Structurally and Unless Owner Reconditions Them They Should be Classified as Combination Oil and Gas Wells

Company	Lease	Well No.	Gas volume, M. cu. ft.	Oil prod., bbls.	Gas-Oil ratio
Anderson-Prichard	Orphanage	1	153,000	1,834	83,000
Coline	Clauer	16	26,664	690	38,600

Coline	Olds	1	31,552	1,476	21,734
Coline	Olds	5	35,400	804	43,500
Coline	Olds	6	39,000	600	54,500
I. T. I. O.	Drake	1	41,210	1,775	23,200
I. T. I. O.	Emerson	2	8,321	282	29,507
I. T. I. O.	Emerson	4	53,632	138	388,640
I. T. I. O.	Emerson	8	25,086	736	34,100
I. T. I. O.	Emerson	10	24,776	96	258,080
I. T. I. O.	L. Jones	2	21,925	1,010	21,700
I. T. I. O.	L. Jones	11	106,232	2,100	50,700
I. T. I. O.	Salsman	3	13,059	444	23,900
I. T. I. O.	Theimer	5	41,644	1,074	38,700
I. T. I. O.	Theimer	6	95,057	1,398	68,000
I. T. I. O.	Trosper	3	23,512	798	29,420
I. T. I. O.	Trosper	6	32,770	1,194	28,200
I. T. I. O.	Trosper	7	64,425	474	135,918
I. T. I. O.	L. Trosper	2	28,002	786	35,600
Shell	Petty	2	19,000	78	244,000
Shell	Petty	5	32,000	173	185,000
Sinclair	Kinter	2*	50,000	80	625,000
Sinclair	Kinter	4*	100,000	61	1,762,549
Sinclair	Kinter	5*	62,407	48	1,309,146
Sinclair	Kinter	6*	55,749	18	3,047,846
Sinclair	Kinter	7*	93,000	80	1,200,000
Sinclair	Kinter	8*	57,424	18	3,244,294
Sinclair	Kinter	9*	62,407	37	1,691,247
Sinclair	Stamper	2*	60,000	75	793,651
Sinclair	Vencl	7	30,800	1,224	25,200
Sinclair	Vencl	10	80,000	1,842	43,400
Sinclair	School Land No. 54	8	75,000	1,691	44,300
Skelly	Hoops	5	22,000	561	39,000
Slick	Foote-Briscoe	1	18,000	824	28,846
Total		35	1,707,054	24,897	

*Shut in since about August, 1930. Data furnished by Sinclair Company.

[fol. 274] The following wells have been tentatively classified by the Corporation Commission as gas wells and are producing from the Simpson formation. The Committee recommends that they be reclassified as oil wells or "combination oil and gas wells", as the case may be.

Classified Gas Wells in the Oklahoma City Field Producing from Simpson Formation

Company	Well	Gas vol. M cu. ft.
Champlin	Naden # 1 (1,500 M. daily)	75,000
Cromwell-Franklin-ITIO	Trosper Park # 7	75,000
Cromwell-Franklin-ITIO	Trosper Park # 28	100,000
Wirt Franklin	Theimer # 3	75,000
Government Pet.	Government # 1	60,000
Jones (Blackwell)	Scruggs # 1	187,000
Mid-Kansas	Fortson # 2	10,500
Phillips	Traders Compress # 1	80,000
Sinclair	Kinter # 1	30,000
Sinclair	Stamper # 1	14,300
Slick	Glidden # 1	65,000
Slick	Glidden # 2	29,000
Slick	Huseman # 2	38,000
Sunray (Gant-Garvin)	Harris	157,000
Total (14 wells)		985,800

[fol. 275] With reference to the repair work recommended for wells producing from the Prue sand and lower formations in the same well, the following resolution was unanimously approved:

Resolution

"That no well be allowed to produce from the Simpson or lower formations with the Prue sand exposed in the same hole."

The Following Wells are Cased Above the Pure Sand and are Also Producing From the Siliceous Lime

Company	Lease	Well No.	Gas volume, M cu. ft.	Oil potential, bbls.	Gas-Oil ratio
Coline	Olds	8	7,000	488	14,300
Coline	Warren	7	4,000	3,215	1,250
Coline	Warren	8	4,000	3,277	1,220
Coline	Warren	9	6,000	2,458	2,450
I. T. I. O	A. Brokaw	2	Dead	.....	.....
I. T. I. O	C. Brokaw	4	22,678	11,028	2,056
I. T. I. O	Wheeler	2	64,921	2,922	23,500
I. T. I. O	Wheeler	3	59,622	807	25,743
Prairie	Hiddleston	4	453	180	2,516
Slick	Zerkerle	1	814	814	1,000
Sub-total		10 wells	169,488	25,189	

A study of the above tabulation shows that these wells have an oil potential of 25,189 barrels and it is the opinion

of the Committee that if additional casing is run to shut off the Prue sand that the wells will probably stop flowing and it is doubtful if gas lift can be successfully applied to them. [fol. 276] The following wells are cased above the Prue sand and also produce from the Simpson formation:

Wells Cased Above the Pure Sand and Producing From the Simpson Formation

Company	Lease	Well No.	Gas volume M cu. ft.	Oil potential bbls.	Gas-Oil ratio
Blackstock	Harvey	1	26,000	1,500	17,300
Denver	Harvey	1	25,000	16,030	1,160
Cromwell-Franklin-ITIO	Trosper Park	29	80,000	(No test)	
Sinclair	Kinter	3	40,000	216	185,000
Sinclair	Kinter	10	30,000	89	336,000
Sinclair	Stamper	3	20,000	250	80,000
Sinclair	Stamper	4	20,000	21	95,400
Sinclair	Stamper	5	40,000	Gas well	
Slick	Dean	1	35,000	43,655	801
Slick	Hoopes	8	34,500	576	59,900
Slick	Thornton	1	18,600	11,966	1,555
Sub-total		11 wells	369,100	74,303	
Total		21 wells	538,588	99,492	

Recommendations Relative to Exclusion of Water from Producing Formations

The following resolution was unanimously adopted by the Committee:

Resolution

"All producing wells that have penetrated the Simpson formation, and, have exposed in the hole one or more sands in the Simpson, or a sand in the Simpson with the Arbuckle formation, shall, on showing water be immediately plugged back until the water is shut off, unless it is reasonable to believe that water is coming from some other well."

[fol. 277] The following resolution relative to water reports to the Umpire was unanimously approved by the Committee:

Resolution

"Each Operator shall file with the Umpire, between the 1st and the 10th, of each month, a report showing the percentage of water and approximate number of barrels of water produced daily by each well during the preceding month, provided that such reports need not be filed for wells producing less than one per cent water".

Answers to Questions Asked in Mr. Briggs' Resolution

1 Q. What is the proper gas-oil ratio to apply in the Okla. City field?

Ans. A maximum of 20,000 cubic feet gas per barrel of oil.

2 Q. Shall the same gas-oil ratio be applied to wells producing from different horizons? For example—(a) Wilcox sand, (b) Simpson sands other than Wilcox, (c) lime.

Ans. Yes.

3 Q. What shall be done in the case of wells having excessive gas-oil ratio when—

(a) They are properly cased?

(b) When they are not drilled too deep?

(c) When the insertion of tubing or application of back pressure increases the gas-oil ratio over that theretofore obtaining?

(d) When application of surface back pressure increases the gas-oil ratio?

(e) When successive openings show a marked variation above and below an average ratio?

[fol. 278] Ans. Wells producing gas with gas-oil ratios less than 20,000 cubic feet per barrel shall take the oil well classification; that is, no requirements is made that the gas from such a well be utilized.

Wells with gas-oil ratios above 20,000 cubic feet per barrel shall be classified as "Combination Oil and Gas Well" and the gas production limited to the same percentage of its potential gas volume as the percentage of the potential of the oil is permitted to be taken under the proration rules and regulations promulgated by the Corporation Commission.

3 Q. (f) When excessive gas-oil ratio is caused by an improperly cased well in the vicinity?

Ans. The owner of a well which produces with an excessive gas-oil ratio caused by an improperly cased well in the vicinity should first take the matter up with the owner of the improperly cased well, and if no satisfactory results are obtained, he may then take the matter up with the Corporation Commission, as it is the belief of this Committee that the owner of a well should not be penalized on account of a neighbor's negligence, particularly when the improperly cased well can be repaired.

4 Q. How the measurements of casinghead gas shall be taken; that is, by orifice meter, by Pitot tube, or what not, and what pressure base shall be used; that is, two ounces, four ounces, eight ounces, or two pounds? If by Pitot [fol. 279] tube, when and how often shall readings be taken, or shall recording gauges be used, and if the latter method be employed, what is the estimated expense of installing suitable measuring equipment upon each and every well in the field?

Ans. In addition to the following, see answer to Question No. 5. The pressure base on which the gas volume is to be computed shall be four ounces above 14.4 lbs. (or 14.65 lbs.); when the Pitot tube is used on a vent line the reading may be taken through a tap on the side of the vent line or through a smaller line extending up over the top of the vent line. The tables to be used for Pitot tube measurements shall be based on a specific gravity of 0.75, temperature 60° F., and 14.65 pounds pressure base; such gas tables to be supplied from the Umpire's office. It is estimated that a recording gauge suitable for use in connection with Pitot tube measurements would cost approximately $55.00. The estimated cost of an orifice meter up to a 10-inch setting is $350.00. The capacity of a 10-inch meter at pressures ordinarily carried in oil and gas separators is approximately 25,000 M cubic feet.

5 Q. What administrative steps shall be taken to insure the accurate measuring and reporting of casinghead gas from oil wells?

Ans. The Committee recommends that gas measurements shall be taken on each well at the same time that the next oil potential gauge is taken. The representative of [fol. 280] the Umpire shall witness and record gas gauges at the end of each hour during the potential test on each well and report in writing, on forms to be supplied by the Corporation Commission, the following information to the Corporation Commission with a copy to the Umpire:

1. Pressure and differential readings taken from Orifice meter charts.

2. Size of Orifice plate and size of line in meter setting.

3. For gas going through vent line:

(a) Diameter and number of vent lines.

(b) Pitot tube measurements:

(1) Inches of water or inches of mercury.

(2) Pounds per square inch (pressure gauge reading).

All Pitot tube measurements shall be computed by tables furnished by the Umpire; these tables to be based on .75 gravity, 60° F. temperature and 14.65 pressure base.

The Umpire shall inform each Operator his gas allotment for each of his wells whose potential gas gauge test shows a production of gas in excess of 20,000 cubic feet per barrel of oil. The Operator of such wells shall not produce a greater percentage of gas potential than the orders of the Corporation Commission permit for oil potential. Actual daily oil and gas gauges shall be reported to the Corporation Commission, copy to the Umpire, on all wells on production that produce gas in excess of 20,000 cubic feet per barrel, which are herein classified as "Combination Oil and Gas Wells".

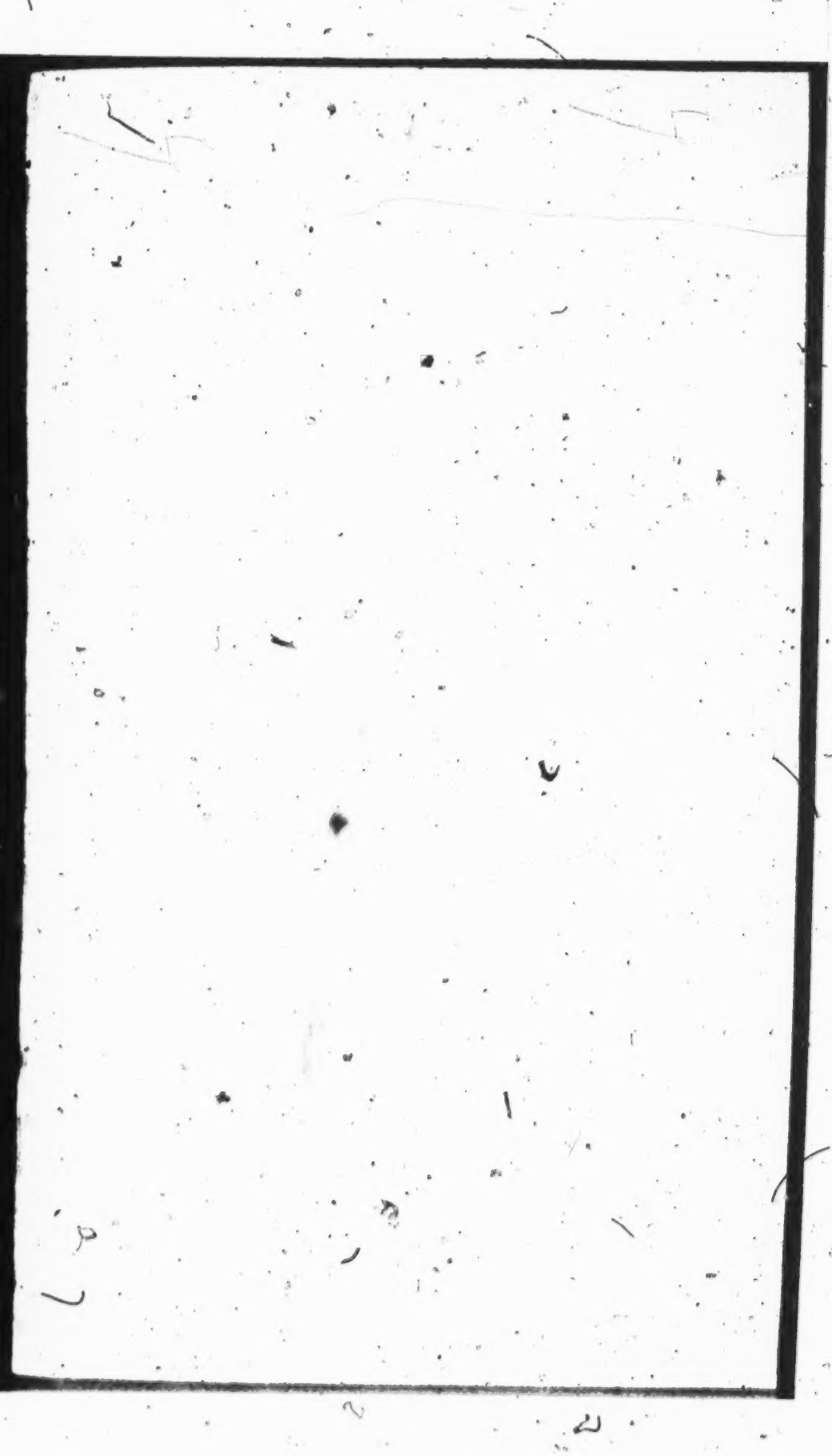
[fol. 281] The gas gauges applying against the gas allotment of all wells producing in excess of 20,000 cubic feet per barrel, shall be made by orifice meters. (The answers to Question No. 5 were approved by all members of the Committee with the exception of Mr. Paschal.)

In the event the recommendations of your Committee are approved, it would be the further suggestion of this Committee that a competent engineer be employed by the Operators Committee and placed in charge of the proration of gas from the Oklahoma City Field, and that this engineer be made an agent of the Corporation Commission.

Respectfully submitted.

M. J. Kirwan, Chairman Indian Territory Illuminating Oil Co. M. J. Kirwan. E. A. Paschal, Coline Oil Corporation. E. A. Paschal. J. R. McWilliams, Skelly Oil Company. J. R. McWilliams. E. F. Guidinger, Phillips Petroleum Co. E. F. Guidinger. E. J. McKee, Cromwell-Franklin Oil Company. E. J. McKee. R. W. Brauchli, Anderson-Prichard Oil Corp. R. W. Brauchli. Harold S. Thomas, Thomas B. Slick Companies. Harold S. Thomas.

March 11, 1931, Oklahoma City, Oklahoma.



CLERK'S COPY.

Vol. II

(EXHIBITS—PART 4)

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1931

No. 485

CHAMPLIN REFINING COMPANY, APPELLANT,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA AND PAUL WALKER, E. R. HUGHES, AND C. C. CHILDERS, ETC., ET AL.

No. 486

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA AND PAUL WALKER, E. R. HUGHES, AND C. C. CHILDERS, ETC., ET AL., APPELLANTS,

vs.

CHAMPLIN REFINING COMPANY

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

FILED OCTOBER 26, 1931

(36,299, 36,300)

(36,299, 36,300)

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VOL. II

(EXHIBITS—PART 4)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 28, 1931

	Original	Print
No. X—Potentials, Oklahoma City field, January and April	345	363
No. Y—Summary of January and April potentials by companies	382	426
No. Z—Status of estimated wells, June 19, 1931	385	428
No. A—Order No. 829 by Corporation Commission on July 1, 1914	388	432
No. B—Order No. 878 by Corporation Commission, November 26, 1914	393	437
No. C—Order No. 920 by Corporation Commission, June 5, 1915	396	440
No. D—Letter of instruction, dated June 10, 1915	412	459
Clerk's certificate to exhibits....(omitted in printing)..	418	

[fol. 282] DEFENDANTS' EXHIBIT No. I, Record, p. 299

Pipe Line Runs from Champlin Leases in Oklahoma City Oil Field

McCalep—

	Gross barrels
Sept., 1930	28,517.71
Dec., 1930	146.72
Mar., 1931	79,154.87
Apr., 1931	87,077.90
May 1st to 18, 1931	48,449.99
May 19th to June 13th	none
June 14th to June 21st	none
June 22nd to June 25th	11,162.07
Total	254,509.26

Naden—

Sept., 1930	13,935.94
March, 1931	74,908.15
April, 1931	71,937.58
May 1st to 15th, incl.	49,731.81
May 16th to June 13th	none
June 14th to June 21, incl.	none
June 22 to June 25, incl.	15,399.56
Total	225,913.04

Seal—

March, 1931	66,866.17
April, 1931	53,992.79
May 1st to 28th, incl.	32,533.28
May 29 to June 13, incl.	none
June 14th to June 21st, incl.	none
June 22nd to June 25th, incl.	3,951.04
Total	157,343.28

[fol. 283] Abstract, and counter abstract of evidence, before Corporation Commission at the October, 1930, hearing, relative to the subject of waste, which abstract was prepared for the use of this Court at the hearing in January, 1931, on the application for an interlocutory injunction, offered in evidence here upon the agreement that it might be used as evidence of what the Commission had acted upon

on the subject of waste but not to be used as primary evidence in this case, Record, p. 327, which abstract so offered was in words and figures as follows, to-wit:

[fol. 284] IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

In re Proration Cases No. 1156, No. 1173, No. 1175, No. 1176 and No. 1183. Equity

CHAMPLIN REFINING COMPANY, Complainant in No. 1156; Marco Oil & Royalty Corporation, Complainant in No. 1173; Century Petroleum Corporation, Complainant in No. 1175; Oils, Inc., Complainant in No. 1176, and Capitol Producing & Refining Company, Complainant in No. 1183

VS.

CORPORATION COMMISSION et al., Defendants.

ABSTRACT OF EVIDENCE OF WASTE IN HEARINGS BEFORE CORPORATION COMMISSION

Filed Jan. 17, 1931. Theodore M. Filson, Clerk, by Grace G. Butler, Deputy.

Allen K. Swann, Attorney at Law, Philcade Building, Tulsa, Oklahoma.

[fol. 285] IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

In re Proration Cases No. 1156, No. 1173, No. 1175, No. 1176, and No. 1183. Equity

CHAMPLIN REFINING COMPANY, Complainant in No. 1156; Marco Oil & Royalty Corporation, Complainant in No. 1173; Century Petroleum Corporation, Complainant in No. 1175; Oils, Inc., Complainant in No. 1176, and Capitol Producing & Refining Company, Complainant in No. 1183,

VS.

CORPORATION COMMISSION et al., Defendants

ABSTRACT OF EVIDENCE OF WASTE IN HEARINGS BEFORE CORPORATION COMMISSION

Complainants in the above entitled actions herewith submit attached hereto an abstract of all of the evidence

offered before the Corporation Commission of the State of Oklahoma as shown by the records submitted as exhibits in these causes, and hereby certify that the attached abstract of the subject of waste is an abstract of all of such evidence.

This is submitted in connection with the contention of these complainants that there was no evidence of physical waste.

A. R. Mann, H. G. McKeever, Harry Glasser, Nathan Scarrett, J. B. Dudley, R. M. Rappie, B. M. Parmenter, A. E. Pearson, Counsel for Complainants.

[fol. 286] Waste

Beginning on page 79 and concluding on page 81, RAY M. COLLINS testified on direct examination that he had production in the Cushing pool and other new pools where there was an over-production and at that time they let it go down the creek saying "we could not take care of it, and our neighbors were running theirs through the pipe line"; that if there were no steel or wooden storage, or appreciable amount thereof to store oil permitted to be produced, it is a necessary result that oil must either go into earthen storage or be entirely wasted; that in earthern storage there may occur a loss of anywhere from 50 to 90% due to evaporation, absorption or washing.

On cross examination, beginning at page 100, the same witness testified that there is no waste going on in Oklahoma now whether the field is prorated or not; and that everything is running satisfactorily in Oklahoma now; that he wants to prevent actual waste which he says on page 101 is opening up a well and letting it go down into the ground; on page 103, that he wants proration to prevent actual waste for one thing and on page 104, that he would want a rule to prevent waste besides (a rule or order by the Corporation Commission stopping the tremendous drilling campaign in the Oklahoma City field. On page 110 he testifies he wants proration to prevent physical waste and to prevent one neighbor taking more oil out of it than his proportion. On page 111 Collins testifies in answer to the proposition and question: "If you take oil out from under me, I am going to run my well wide open. That is not physical

waste, is it?" "That if I let it go down the creek it will [fol. 287] be". He further says that he cannot name a producer in this field that opens his well and lets the oil run down the creek at the present time or in the last 5 years.

On page 112 he testified that if you lift proration there will be actual waste, for the reason that a man who has no pipe line facilities or cannot sell his oil will let it go down the creek; that he doesn't know of any oil being stored in earthen storage and that he hasn't known of any since about the Cushing field days which he says was about 15 or 16 years ago (page 114).

On page 115 in answer to the proposition presented where a man owns his own well, pipe line, refinery and marketing facilities for the finished product and the question as to what harm there would be in letting him run to full capacity that "as a matter of waste, if I had an offset well and you opened your well and I was not able to take care of mine, I certainly would build earthen storage and try to take care of it in that way". On page 116 he testifies that his only reason is that it would be taking more oil from his neighbor than what he considers to be a due proportion.

At page 178 Collins testified that they intended to include the Osage reservation in the proration orders, and at page 180 that he doesn't believe there is imminent danger of waste being committed there; and further that prior to the time he made the application he did not ascertain whether there was any waste in those fields other than the ones heretofore prorated. He testifies also at page 180 that in his judgment there are many areas, many wells, many leases which will have to be given special attention by the [fol. 288] Commission to prevent actual waste by reason of this order; that is wells making water and wells that have no gas pressure to speak of and others that are poorly equipped if this order is forced on them and given strict enforcement, that will be positively injured rather than benefitted.

At page 181 he says that if the little wells producing from 5 to 25 barrels per day which the contemplated order places under proration were permitted to run 100% waste would be imminent in those fields; that the waste would occur by the fact that this purchasing power has been transferred to Oklahoma City, and they would not be able to take care of

it. At page 183 he states (referring to fields of small production) that there has been no waste in the past.

At page 201 Collins says that his statement that there is no waste and has been no substantial waste in the state of Oklahoma is due to the fact of these very proration orders that have been issued in the past.

At page 215 Collins in answer to a hypothetical question "supposing the I. T. I. O. Co. had a demand for 100,000 barrels of oil per day at 50 cents per barrel which they wanted to sell and the other producers wouldn't take that for their oil, if it would be waste for the Commission to let them sell it" testifies that it would be waste (page 216-217). At page 218 he says his reason is that the other fellows would have to run the oil into earthen storage. He states further that if they could show there was actual demand and no waste he would certainly recommend it.

At page 223 Mr. Collins testified that "we" did not take into consideration the financial ability of a correlative [fol. 289] owner to drill a well; that as long as he (a correlative owner) took ratably as the common pool was prorated, there would be no waste. He says that he wouldn't try to protect any correlative owner of the common supply because he hasn't got a well on his lease (P. 224).

At page 252 Mr. Victor H. Smith testified that his company has one well in the Oklahoma City pool and that they can handle a percentage of the production from that well without any waste occurring in connection with it, but not all the potential which was rated as 150,000 barrels per day based on some two hours' gauge; that they could handle possibly 30 or 40,000 barrels per day through their plant and other facilities without waste, except perhaps waste of gas; that if they should find it would produce more than they could handle it would be operated so as to commit no waste of oil (p. 253).

At pages 270 and 271 Mr. Smith testified that if the Oklahoma City field was opened up and no limit placed on production all the little refineries in the state would open up and "the first thing you know we would have 3 cent gasoline," but there wouldn't be any waste in connection with 3 cent gasoline because "we would get a lot more airplanes."

At page 273 Mr. Smith testified that if oil were to go down in price to [illegible] cents the big companies would build tanks to

put it in and that there would be a waste in connection with the storage of oil in steel or earthen tanks. At page 275 Smith says he doesn't believe there would be any waste of oil if the Commission should set aside its orders and turn everybody loose in the Oklahoma City pool, unless the pro- [fol. 290] ducers would be foolish enough to try to put light oil in earthen storage. In answer to the question: "Isn't it a fact that in every flush field that we have had in Oklahoma where we didn't have proration they have put it in earthen storage?" he says: "I wouldn't say so on light oil." Upon being asked if they didn't do it in Cushing he replied "Yes, if you go 'way back in the old days. They didn't have anything else to do with it." He says they did that at Smackover but not on light oil. He states there is waste on heavy oil in earthen storage but not as much as the light (p. 276). The small producer would take the crude as far as his facilities would permit and without waste. If the larger producer cannot ship all of his oil out he will keep his wells shut in until he can increase his facilities so as to handle more. P. 277.

Mr. Dye testifying at page 300 says that to shut in wells entails waste of oil because "if you shut in a well you never get the maximum production back in some cases". The witness further testifies at page 304 that he has been engaged in the oil business since 1916 and that they have never had any waste; that he doesn't know of any waste in the production or handling of crude oil anywhere and that the question of waste is not bothering anybody at this time as far as he knows.

At page 308 the following question was asked: "In your judgment, if proration orders were lifted by the Commission in that field (Oklahoma City) and that field was opened up, would there be any waste of crude oil or would there be any taking out of proportion by one operator of a well as against another?"

[fol. 291] The witness, Dye, replied: "There would be a discrepancy in the taking of oil; but I doubt whether anybody would allow the oil to flow down the creek. They would probably keep their wells shut in if they couldn't sell it." At page 309 he says it is problematical as to whether there would be and waste of crude if the lid were taken off and that field were opened wide up; it would depend, necessarily, upon how the operators in the field would work.

At page 328 Mr. Dye testifies, relative to waste, that if all the producing companies that have manufacturing and marketing facilities would take the position that they were going only to produce and manufacture their own products it would cause a lot of waste and abandonment of old wells if they continued to drill the way they have been.

Mr. E. B. REESER testifying at page 333 states that if production were in excess of reasonable market demand the condition of waste would follow. At page 324 he says by physical waste he means that "whenever you produce oil in excess of the demand it either goes into earthen storage or tanks; or down the streams or water courses, and in either event loss results." He says he doesn't know of anybody in Oklahoma today that is running oil into streams, nor of anybody that is putting it in earthen storage, or of anybody that has in Oklahoma within the last 10 years. To the question: "Then there is no running down the streams nor putting in earthen storage, so your idea, so far as Oklahoma is concerned, Oklahoma is not now suffering an economic waste?" he replied: "No; I am talking abont what would result if more than the market demand were produced." He states [fol. 292] again at page 335 that there is none run down the streams but that physical waste would result if a volume greater than the market demand was produced; that would result if put in steel storage by evaporation. At page 338 he states he doesn't want an over-supply because it would produce waste by placing it in steel tanks; and in that event you would have an added waste of the cost of producing your tankage, and then the evaporating losses". He says: they should be required to stop storing oil in steel tanks because that would stop waste by steel tankage.

Mr. Reeser testifying at page 391 says that if there were not restrictions of production there would be actual waste; that waste has been prevented by the orders of this Commission from time to time; that prior to the time we had the law under which we are now operating there were conditions of actual waste in times of overproduction; that there was earthen storage in Oklahoma; that there was waste and that there was oil going down the creeks.

Mr. C. C. HERNDON testifying at page 403 says that in his judgment if there were not a proration order in effect, or

if one were not continued in effect, there would be actual waste of crude oil in the state of Oklahoma; that he considers such waste imminent if no such order were made; that the potential production of crude oil in the state of Oklahoma is in excess of the reasonable market demand for it. At page 429 the same witness states: "where the potential production of big flush wells in the aggregate largely exceeds the reasonable market demand, then to permit one man, because he happens to be equipped with these things, [fol. 293] to operate his wells to capacity or above the level that can be maintained by others, either induces waste on the part of the others or causes the loss of other oil to the other man, which in turn leads back to waste, because under those circumstances men protect themselves in the best way they can."

Mr. Herndon testifying at page 437 says he knows of no wells in the Stephens County field where the oil is being wasted, and at page 439 he says that up to this time there is nothing wrong with the way the oil has been handled in Stephens County, but there will be something wrong if they are not brought under this proration order because there will be a transferrence of purchasing power to Oklahoma City.

At page 441 he testifies that in figuring on cutting down the production in Stephens County as keeping it cut down and preventing further development by test wells that is now in effect under the proration order they have not considered the welfare of the producer of oil but rather the alleviation of waste in this state during this time of overproduction. He says at page 442 that he is not assuming that the producer in Stephens County has committed any waste but he thinks he will within the meaning of the statute. He doesn't know where in the Stephens County any man has committed waste in any sense but that it is imminent; that waste will occur. That it will be done by production of oil in excess of the market demand for it. If the Stephens County people increase their production 500 barrels per day that will constitute waste, if there is no market demand for it. If there is a market demand for it, it will not.

[fol. 294] At page 455-456 Mr. Herndon answers the question: "You would not waste any of your oil, would you?" with the reply "I dare say we would".

Mr. A. V. HOENIG testifying at page 466 says he doesn't believe the full production of the Oklahoma City field could be produced without waste and that in his judgment the continuance of some sort of a proper proration order is necessary to prevent waste in the field; and at page 467 that to produce this field without restriction or proration would result in a very material waste of oil and gas.

Mr. OTTO BRADFORD testifying at page 531 says that in his judgment the Oklahoma City field could not be produced at its maximum production without physical waste for there is no way for a good part of the oil, at present, to be handled; that if the wells were all producing he thinks it would necessarily result in earthen storage or actual escape down the streams; at page 532 he says that he knows of no demand here for purchasing oil to be put in storage.

At page 533 he stated that it is his opinion if they were to open up all the wells in the Oklahoma City field they would put it in earthen storage; but that they could keep their wells shut in if they would. At page 534 he says he knows of no big oil company who now stores oil in earthen storage because there is no need of it, nor of any producer of oil that runs it down the creek—that that is a past matter of many years ago.

At page 536 Mr. Bradford was questioned as follows: "Assuming that testimony to be true, and assuming that there is a refinery in this city with an outlet running into this field and has its own production in this field and it [fol. 295] takes that production and runs it to its own pipe line, refines it in his own refinery and markets it through its own marketing facilities, in the usual and ordinary way that refining business is carried on, wherein would there be any waste in such a transaction? He answers: "There probably would not be any waste in the operation of that particular one well if the offset wells would remain shut in". He states this man's activities would not be waste but that it would probably result in waste. It would result in waste because if he had the offset well he would run it same way—to the pipe line, tank cars or turn it loose. He says if he could not sell it he would let it run down the creek.

At pages 540-541, the same witness testifies that to open the field up would necessitate the use of earthen storage; there is not enough available storage to take care of it though they could probably have built tanks along from time to time so as to have had plenty of facilities for taking care of it.

At page 547 the witness testified that some wells have gone dead but that he is not a production man and does not know the cause. These wells were all in the lime production. Water swallows them quickly.

Beginning at page 555 and continuing through page 557, Mr. Otto Bradford, testified that he was acquainted with the Healdton field in the days of its glory in which a situation was created (which approximately gave rise to the present law), where the thousands of barrels of oil were put in earthen storage, plus that which ran down the creeks from which there was enormous wastage involved by evap- [fol. 296] oration, seepage and running down the creek; that the numerous skimming plants erected on the creeks did not in any way recover all the oil that went down the creeks; that he did not know the per cent of earthen storage but that he knew of several earthen storage tanks that were built; that these storage tanks retained some of the oil but that some was lost by seepage, and quite a little was lost by execessive rains which would soften the dams and they would go out. This was not due alone to the fact that the production was more than the market demand but that the only pipe line in the field, Magnolia, could not possibly take care of all the production. They ran their own and a little besides so the other fellows produced any way they could to hold it. At page 559 he says all this took place about 1914 and at page 560 he says this field produced low gravity oil and that the higher the gravity the more the evaporation.

At pages 568-571 Mr. J. R. Travis of Duncan, refiner, pipe line owner with refinery connected with 195 wells and with many years in the business, qualified as an expert. He states he was in the Cushing field; that there was no oil went into earthen storage during the Cushing book, there was some that went down the creek which occurred when they were bringing in the wells and did not shut them in properly or occurred when they were swabbing the wells after

the gas pressure went off and the big waste occurred in 1913 and early part of 1914 and in 1915 or January 1916 the waste had ceased. He purchased oil in the Burnett field, Cotton County field, Stephens County field, Oklahoma City field and has been out there many times, and said, "I have never known of any deliberate waste where they wasted it purposely never in the history of my experience in the oil business". In the Cushing field oil was wasted on account [fol. 297] of the equipment not being right to hold it. They put it in wooden tanks and they leaked and were not well fixed to take care of the oil. They drilled a lot of those wells there without even having a mastergate, but under the improved modern methods producers are equipped with steel tanks. There are no wooden tanks any more, all tanks are steel and no earthen tanks for storage that he knew of. He says we hear nothing of that kind anymore. The various ways that crude oil in the process of production can be wasted, or if when bringing in the well they are not properly equipped in case of swabbing and when they are shooting wells all those conditions will exist whether there is a proration order or not, and the proration orders pretend to have nothing to do with the bringing in of the wells or the control of the drilling. "With our modern methods of handling I think there would be no waste to amount to anything unless it might be in the shooting of the well", but the proration order has nothing to do with that and the witness knows of no other kind of waste that occurred in connection with the production of crude oil. He has been in the business about 30 years.

At pages 584-585, Mr. Travis states that there would be no waste if he were permitted to take his oil out, run it through his pipe line and into his refinery; that the only waste he could see would be a reduction in price, that he doesn't know of waste now such as it has been defined by the various witnesses. Again at page 587 he testifies that he has his own pipe line and marketing facilities and that [fol. 298] absolutely no waste occurs in connection with the handling of it.

The same witness testifies at pages 589 that you can't shut a well in without hurting it. He says "You have no business drilling that sand. If you leave the drill out of the sand you won't hurt the sand, but once you drill it you had better produce it." At page 590 he adds "Because it

goes somewhere. I don't know where it goes. The water comes in on it, and if the water wouldn't come in on it the gas goes somewhere; the gas gets away from you." He states the only remedy for over-production is the cessation of drilling.

Mr. Travis testifying at page 604 says the situation will take care of itself if let alone and there will be no waste. The Corporation Commission or the farmer will not let you run it down the creek. He has never known of any going down the creek maliciously or any other way in the last 15 years. Sometimes they will let a well get away from them. P. 605. He says "there has been no oil wasted and there would be no oil wasted unless it happened like a wild well out here of the I. T. I. O. that got away from them. There has been more oil wasted, I expect, in this field than any other field in the state in the last 10 years which he says is even under proration and none of it done on purpose for that would happen whether there were proration orders or not.

The same witness testifying at page 629 states he is tied onto 195 wells in the Stephens County district; "there is not a well that I am tied onto, with the exception of one, [fol. 299] that it wouldn't ruin it to be shut down." At page 630 he says "I have always been told and thought that we must not shut them in. I have had a producer come to me at 2 o'clock in the morning and get me out of bed so I could run his oil; if I didn't he was going to have to close the well in and ruin it. I have heard nothing contrary until the last year or two".

In reply to the question as to what would be the effect on a well of shutting it in for a certain number of days under the proration order the witness says that "all the wells that I have ever had any experience with the water either came in or the sand paraffined up. If the water comes in it is hard to ever get it off the sand. If it paraffines up you might shoot it and get it off the sand." As to the effect on the ultimate recovery of a pool like that at Oklahoma City of shutting in the wells that it would hurt them if allowed to flow wide open but to pinch them in and let them flow some all the while would help the wells.

At pages 659-660, Mr. Travis on cross-examination testifies that there are some oils you can't waste by putting it in earthen storage but most Oklahoma oil would be wasted

if put in earthen storage. If put in tight steel storage he knows of no waste that would occur. There is some initial loss by evaporation. He stored some in Stephens County 10 years ago and there is probably a 2% waste there He says at page 663 that it would be a crime to put Oklahoma crude in earthen storage outside of a little heavy asphalt base crude but that he doesn't know of any earthen storage in recent years. He states there would be a small loss if put in steel storage and left for any appreciable time. He [fol. 300] doesn't know anything about the Smackover field or of earthen storage used there.

The same witness at pages 671-673 says he is not favorable to any kind of storage except in cases of emergency like we have now; that oil is a lot better out of the ground in storage than it is in the ground mixed up with salt water, if you tap a field you ought to go ahead and operate—that it is better to take it out after it has been tapped; that the loss would not be near as much by storing it than it would if you leave it in the ground after the field has been tapped like this one. At page 672 he says that if your storage is tight, the ordinary Oklahoma crude will probably lose from 1 to 3% over a year and then it won't lose any more; that there is some loss in handling high gravity crude or gasoline any way you handle it whether you have proration or not and tanks are strapped 3% short to cover that whether they run it immediately to the refinery or not. He states at page 374 that he knows there is 100,000 barrels of $3 or $2.70 oil stored in the Duncan field and that it has been there over 9 years.

Mr. A. V. Boswell after stating that he has been connected with the oil business 30 years as a hydraulic, petroleum and mining engineer says he has had experience at Bartlesville, Kiefer, Glenpool, Ardmore and Oklahoma City. He says at page 711 that his experience has been in the drilling in of any wells that he has operated in, as long as you keep those wells flowing and allow them to flow freely, you are going to get a full production, but when you close a well in, either completely or partially, [fol. 301] you are going to ruin, to some extent, the production of oil from that well. He says we have tried it several times, at least in 5 fields in Oklahoma and that has been his uniform experience without any exception.

He says at page 712 that it has always been the individual engineers' judgment upon which they all agree, as far as he knows, that it is injurious to a well to shut it in. There are three ways it is injurious to a well to shut it in. You might kill the well altogether with water. If it is a paraffin base, those little crevices where the oil and gas comes from might become what we call leaded up, or closed up by the paraffin, or the substance that we call paraffin. If it is asphaltum base the same thing applies. Those wells are going to be injured. That has been our advice as long as I can remember, even back in the Pittsburgh field in Pennsylvania. Confining it directly to the Oklahoma City field, the condition of the sand on the west side of the field would perhaps not injure a well quite as much as on the east side where it is a lime formation. I would consider the well would be ruined if shut in 65 days.

The witness says at page 713 that the history of the wells is that when you reach the lime formation you are much more liable to get salt water than you are in the sand formation. In Oklahoma City those that have been shut in when opened again have not produced like they did when they were closed in. There has been more wells on the east side of the field that have decreased in production so that actual experience bears out the theory. He says shutting in these wells will have no tendency to conserve the oil, either for the use of future generations or for any [fol. 302] other time. The losses from closing those wells would be so much more than the losses would be from the development of the wells so that in his opinion the shutting in of the wells causes waste rather than conservation; after the sands have been penetrated, it is much better to keep them open. These things are just as well known as the multiplication table. He says "We fellows who have observed those things and examined them have found that is true in every instance." He states this was true in Bartlesville, Glenpool and Ardmore.

At page 715 he says that when a field comes in there is always flush production caused by gas rock pressure, and gas pressure which is larger in the beginning and later recedes; if the wells are permitted to produce it keeps all the avenues open. He states at page 718 that he has observed the Hall-Briscoe well No. 1 which came in at 25,570

barrels and the flow was retarded by being closed in so that they are now able to get only 18,000 barrels; and on page 719 he says shutting in the well was what injured it.

At page 722 the same witness testified that he doesn't think there is any wastage of oil in this field at all; that he has never seen any; that the proration orders have not cut down actual physical waste.

The witness states at page 723 that when there is actual physical waste that is the fault of the one who owns the patricular well which is governed by statute. He says there is no reason why one should be penalized when he [fol. 3] is not committing waste because some one is committing waste; there could be no erroneous waste in connection with the operation of this field if it were permitted to run wide open. At page 724 the witness says any producer should be sent to the asylum if he opened up his wells and let it run wild out into the field.

Mr. Boswell states at page 735 that when you cut off the production you are going to hurt the wells and when you hurt the wells you are creating a waste right there; you are wasting your own substance. Again at page 738 he says shutting in the wells to 25% would cause a waste and loss; by restriction as it is we will have ruined wells; again at 739 he says it would injure the wells to shut them in to 25%. At 740 he says the better way is to let it flow unrestrained if you want to get the full value; that it is better to let it run steadily.

At page 741 the following question was asked:

"Now, for the first time in this proceeding, I would like to ask you this: Having solely in mind the advantage of the people of the State of Oklahoma, and we will say the future generation of the people of the State of Oklahoma, as influenced or affected by our great natural resource, crude oil, which is the better way to conserve those interests, to let these wells run freely, except as restrained from physical causes, or to have them run under proration orders as they are now being run?

A. Well, the former, I should say, would be very much better.

Q. Now, why?

A. Because if you want to adjust this matter and get the oil that is already developed, you have got to let it

run unrestrained. Now, that is going to run the price of oil down some, and when you do that, that is going to stop the fellows in the wildcat field, and there is the only place it can be regulated, because when you drill into an area or into a triangle like this and start development, you cannot stop that oil from flowing. If you do you are just as liable to ruin your well as you are if you drop something in it and ruin it."

[fol. 304] At page 742 he says he thinks it would be better for the consuming public and also better for the state of Oklahoma as a state and an entity that these wells should be permitted to run open continuously, in the meantime restraining actual physical waste. At page 769 he states that he thinks the proration orders have increased waste by reducing the ultimate output of the well.

The same witness testified at page 777 that he doesn't think there would be any waste of oil at all if you opened the Oklahoma City field wide open; it would go to markets and storage. At page 779 he says the average loss in storage is about 2% in steel tanks which you have lost but if you shut in a well you are going to lose 25 to 30%, maybe 50%, maybe all of it. He testifies at page 780 that he doesn't know of flush fields running oil down the creek; that wells got away at Cushing and Healdton just as the Mary Sudik at Oklahoma City and some oil was lost; that was an accident. At page 781 he says there is nobody that is putting oil in earthen tanks now and he knows of nobody who would if they opened this thing up; producers in no state whether they have proration or not is going to put it in earthen tanks.

Mr. JAKE HAMON testifying at page 810 makes the statement that "If this proration plan is put into effect we believe that it will save our wells from waste; if not, economic waste will certainly be obtained, because the small producer cannot afford to build steel tankage for his oil. The cost of the average tank for the average small production is prohibitive. Our production will be wasted.

[fol. 305] Beginning at page 813, Mr. L. C. Hivick says with reference to the waste of crude oil in the last 10 years in production or marketing that "the new equipment has cut out considerable, cut out, I might say, seven eighths of

the waste of oil to what it was in the early days, such as control heads and gate valves, Christmas trees, and different ways of equipping them up. They have now all steel tanks, and we used to have all wood and they were leaking.

At page 810 he says if the proration orders were lifted, there would be no more waste than there is now. Proration orders do not affect waste. He states again, at pages 818-819, that he does not think lifting the proration orders will have any effect upon the matter of wasting of oil. He says he couldn't see where it would waste any more to lift the proration orders unless the man was just an outlaw and violated the orders that now and always have been here to preserve the state's resources.

The same witness states at page 823 that he doesn't think they would open up the wells and let it run out on the prairie if the quantity taken out was greater than the shipping facilities; he says he never heard of it in Cushing or Seminole and he was in all of them; the only cases of that kind would be where the wells got away.. He says they have not had proper equipment up until late years and some oil would be wasted until they could "harness" up properly. There would be some oil run down the creeks from the sun heating against the wooden tanks.

The witness says at page 824 that it has always been [fol. 306] conceded that it hurts a well to shut it in; in some ways shutting in a well has a tendency to create waste of crude oil; you would get more oil, a lot more, if you keep your well open. As a matter of conservation he states as long as he could sell it he would let it run. At page 837 the witness states "I don't think they are wasting any more oil here because they have proration, than they would if they did not have it."

Ed Trippett testifying at page 859 says "as a general proposition I think that the closing in of wells will hurt them. Some cases it does not; more cases it does." Where the well is producing some water and the gas pressure is weak to shut it in would ruin it in course of time. He says he has seen wells that were good oil wells shut in that were not making any water and when they opened them up for at least three weeks they would not make any oil at all,

and others making both oil and water that never came back. Some were opened up in Oklahoma City that were not making any water and it did not seem to hurt them.

The same witness testifies at page 869 that if you want to conserve the natural resources of crude oil and prevent the waste thereof don't drill into it and if you have it would be better to get it out of there while they can; there is a certain amount of waste no matter how you handle oil.

Mr. Trippett states at page 873 that he thinks it hurts a well to shut it in if it is making any water at all. At page 874 he says he thinks the south wells in the Oklahoma City fields are making water. He states again at page 881 that he thinks there is more waste under proration than with-
[fol. 307] out because oil is left in the ground that can never be recovered.

The witness states on page 890 that if he owned a lease from which he could not dispose of his oil although his neighbor could he would leave his in the ground. At page 901 he says he can sell his full production without causing any waste of crude oil.

At page 921, Mr. WILLIAM A. SPRINGALL, a representative of the M. K. T. Rd. Co. says if they were permitted to handle as much oil over their road as they might they could handle it without any waste of oil.

Mr. E. W. JONES testifying at page 915 says that it is not the desire of any operator in the Oklahoma City pool or any other pool in the state of Oklahoma to waste crude oil; we naturally would not waste it and if run to full capacity there would be no waste; I would just produce and sell the amount of oil that I could sell; as a matter of business or enterprise and judgment, we would not permit it to be wasted, as a matter of economical waste we would not do it, or as a matter of physical waste we would not do it; every operator that is honest with himself will produce only the amount of oil that he can sell. At page 946 he states that he has heard a lot of them say that they would produce it right on the ground but "I have been operating a long time, and I have never seen it done deliberately."

At page 949 Mr. Jones says that it has been the general opinion of operating companies in the oil business in every field I have ever operated in, and I have operated in a num-

ber of them, that to shut in a well completely has been known to kill wells entirely; neither I nor any other operator in the [fol. 308] Oklahoma City field knows "what the effect is to shut it in"; he says: "I know of one well in Texas that came in for 25,000 barrels per day, they opened it to fill their tankage and shut it off for additional tankage, they shut it off and opened it, and it has never produced a barrel of oil to this day." He says the pinch in is the recognized, modern and better way to do it because it keeps the channels open to the well. p. 950.

Mr. Jones, at page 983, in answer to questions asked by Commissioner Capshaw, said "I operated in Seminole and Bowlegs and Little River, and all of the fields of recent flush production in Oklahoma and I have not seen any wastage of oil since the days of Spindletop and Smackover and some of those big flush fields in Texas". And again at page 985 he states "I never did see any waste (referring to the Seminole fiel-s). I drilled lots of wells there. So far as physical waste is concerned in Seminole and Little River and Earlsboro and all of those fields, I never saw physical waste there, unless a well got wild, just like the Mary Sudik did". He states further that he had never heard, in his lifetime, of a man anywhere deliberately opening a well and running it on the ground and not trying to take care of the oil. He saw it run on the ground in earthen storage tanks and that was customary in Goose Creek and all through South Texas—they never figured that a waste. He said that would cause a lot of it to go down the creeks when they had a big rain just like storms killing people when you didn't expect it to come.

Mr. W. P. Hoseman testifying at page 997 says that where the wells are opened intermittently there is a loss [fol. 309] of from 10 to 20% which is not recoverable—that is, lost forever. He figures (p. 998) that 10 to 20% more would be recovered under the pinched-in method. Shutting in after reaching the oil sand results in wastage over what would be recovered in oil if the well were permitted to flow steadily, even though on a percentage flow. The orders in force result in a direct waste of the available oil underlying the Oklahoma City field, which would be underground waste of 10 to 20%. He says, on page 999, that the cause of the recoverable oil being decreased when the well is shut in from time to time over and above the

amount it would be if permitted to flow all of the time although pinched-in is due to the fact that there has been established a pressure gradient reaching out to what we might call throughout the drainage area of the well. There is a pressure gradient. That means there is a release of both gas and vapor from the liquid. When the well is shut in, the area of drainage or the drainage volume has a decreased pressure in it which has to be equalized. That pressure is equalized largely by a continued release of both gas and vapor from the liquid, and the release of that gas and vapor, which would otherwise have remained there and kept the liquid in a state that it would flow relatively faster, is the cause of the loss in his judgment.

The witness, after having shown a wide and thorough research into the Oklahoma City field conditions, states on page 1001 "it indicates clearly a very rapid rate of decline in the rate of production of the average producing well in the field." He says it indicates a material waste [fol. 310] or loss of otherwise recoverable oil and gas. He says the average decline of the average well from Dec. 30, 1929 to July 28, 1930 was from 9,323 barrels to 1,403 barrels which is abnormal and was caused in his opinion by improper completion and operation.

At page 1038 of the record, the witness states that he is convinced there would be a larger ultimate recovery of oil if there were a pinched-in flow rather than an intermittent. He states his opinion at page 1048 on the effect of the proration method of producing oil in the Oklahoma City field to be that the producing properties have been injured in that they will never yield the ultimate that they would have yielded. He says "my understanding of waste would indicate that it constitutes waste".

The witness states at page 1054 that they ran oil to earthen storage in the early days because they didn't know the results and it was sold on a different basis. He testifies that oil was run to earthen storage in the Smackover field in Arkansas.

At page 1057 the same witness states there would be from 1,500 to 3,000 barrels more per acre recovered if the wells were properly completed and properly operated. About one half of the loss is due to improper operation "under proration". At page 1090 the witness states that if one man were allowed to flow his well wide open and others

were required to keep theirs closed on account of marketing conditions there would be a disproportionate taking and a loss in ultimate recovery under the same conditions which would constitute underground waste. He states the same thing again at page 1095.

[fol. 311] Mr. Hoseman says at page 1104 that he has never heard of any one who purports to open up wide the wells in the Oklahoma City field, nor of any waste being committed in other fields, nor of any limitation in the transportation facilities. He states further that he knows of no reason why production in other fields should be lessened or restricted, nor of any reason why any good would be accomplished by such a proration order.

The witness states again at page 1122 that he has never heard of any one who has insisted upon or advocated a wide open flow in the Oklahoma City field except loose talk.

At page 1146, Mr. CHARLES W. WILKEY says that the experience he has found from association with men that have been dealing in the oil game for 25 years or longer is that a well that has been shut off will cause the well to decrease in production. He says further at page 1151 that shutting down the wells caused a material decrease in production.

Mr. J. L. McWILLIAMS testifying at page 1175 states that he does not think the operation of the proration orders has caused a decrease in the ultimate recovery of the pool. He states that with higher overall pressure it is logical to assume that it would produce more oil from the field as a whole than it would if we had no proration orders.

The same witness states at page 1180 that the head of gas which has accumulated while the well is shut in and must blow off before any oil can be produced causes a loss of oil—which is lost as far as the oil production is concerned.

[fol. 312] Mr. McWilliams states at page 1194 that the production would have had a higher recovery under the pinched-in flow than under the intermittent time flow which would be relatively true in the future. Again at page 1200 he says that on account of the intermittent flow method in operating those wells there has been a considerable loss in ultimate recovery. He states at page 1206 that if you wanted to get the largest percentage of ultimate recovery

from the wells you would take into consideration the different conditions existing in and about the well and then govern your operations accordingly; as far as he knows none of the wells did run wide open.

The witness states at page 1207 that if the Oklahoma City field were allowed to flow wide open in his judgment it would cause underground waste to occur; market conditions would cause underground waste if the wells were wide open and an operator could not dispose of all of his production in the ordinary channels of commerce.

McWilliams testifies that he was in the Smackover field (p. 1208) and that there was a very big loss there (p. 1209), that the tanks were made of sand, they would wash out and absorb lots of oil. Earthen storage was used generally and conditions were such that there was a very high percentage of loss that took place about 1924 or 1925.

The witness states, at page 1212, that future underground waste could be eliminated by casing the well properly, pinching the well and proration. He says they might [fol. 313] stream some of it off into the Mississippi river which would entail a loss and that to open this field (Okla. City) up would cause a terrific underground waste. He states at page 1213 that if "we" get 25% of our oil in the Oklahoma City pool we will do well while in Seminole they think they have gotten 40% of the recoverable oil. Again at page 1216 he testifies further that they will do well to get 25% of the oil and therefore we waste 75% of the energy and that is really only a small proportion of that 75%, a part of the energy can be saved by putting it on a percentage run rather than on an intermittent flow.

Mr. Charles Jacobson testifying at page 1223 states that the company he is connected with, Barnsdall, operates in the Osage and Seminole pools; that they have 93 wells in that locality and that there is no waste of crude oil in the way they are handling them; and at page 1224 he says they can control the wells so there will be no waste.

At page 1225 the same witness states that they are using no earthen storage and does not know that they have ever used any and that he knows of none being used in the Osage or Seminole field. He says further that he knows of no one "that is so operating a well to cause physical waste," nor of any operators who are operating in a way not modern and

up to date in handling crude oil. He says he can cite this Commission that no waste is occurring that ought to have its attention, and that that is true in the Osage Nation.

Mr. Champlin testifying at page 1235 says there was no waste in connection with the flush production in the Garber [fol. 314] field. He says at page 1237 that they didn't open their wells up and let it run out on the ground because they did not want to waste it, that they have better sense. He says "I don't think they would any more open up their crude and let it flow out than they would open up their picket book and throw their money away." He states at page 1238 that proration in the Barber field would not in any way tend to reduce the waste of crude oil nor tend toward conservation, having in mind the ultimate recovery.

The witness states at page 1245 that as far as his experience and observation goes in the Seminole pool there is no waste of crude oil over there in any way. At page 1263 he says he knows of no waste of crude oil being committed in the Oklahoma City field nor of any waste being committed in connection with the production of crude oil anywhere in the State of Oklahoma. At page 1264 he says shutting in a well is very injurious; that wells are sometimes destroyed or lost by shutting them in and keeping them shut in.

Mr. Champlin says at page 1270 speaking of the Deaver pool that it can be produced at 100% of its possible production without waste.

At page 1291 the witness states that he has heard of earthen storage but not lately, not in his time; that he doesn't think any body would put it in earthen storage. He states at page 1292 that he has seen oil in earthen storage in the Beggs field but that was caused by a well coming in for a large amount and they were unable to take care of it so they temporarily put it in earthen storage and withdrew it as soon as they could get a pipe line into the field. He says he doesn't think that would be done in this field (Okla. City); 10 or 15 years ago they were not as well equipped to [fol. 315] take care of producing wells as they are now; they didn't have control gates and often wells were brought in for a big production when they were not expecting it and the oil would go to waste.

The witness states at pages 1301-2 that he is in favor of producing the wells wide open; that he thinks that is an economic way to produce oil and will not result in under-

ground or surface waste; that there can be no underground waste. He says at page 1314 that he wants to commit no waste of crude oil and will not; that if a person did not have the market or could not sell his oil he would shut it in; that they don't have to waste it.

Mr. WILLIAM H. ATKINSON testifying at page 1341 says that in his opinion shutting in the wells under the time plan does not injuriously affect the wells, that is the sand wells in the Oklahoma City field; some wells might be making water and it would hurt them and that in certain conditions it would pour water in and hurt the other fellow; it would pull the water in and in time affect the whole field, particularly the north end where he is interested (P. 1342).

Mr. JOHN FULLER testifying at page 1347 says "beaming down the well—and this is general in every sand in the field, additional back pressure on the well increasing the gas-oil ratio would thereby reduce the ultimate recovery"; again at page 1351 he says "for the purpose of the largest ultimate recovery, I believe that intermittent flowing is better than pinched in."

Mr. WILLIAM H. ATKINSON testifying at page 1357 says if the proration were lifted he would probably run to open tanks, earthen storage, closed storage, or anything else he could get; at page 1358 he says he doesn't know of anyone doing that now—because they prorate it; in the fields that [fol. 316] are not prorated nobody is letting their oil run to waste but with the Oklahoma City potential they would.

Mr. C. C. CARLISLE testifying at page 1385 says he has seen indications of opening up wells and letting them run out on the pra-rie down the streams, or into earthen storage but not recently; that the Prairie Oil & Gas Co. does not do that intentionally; that improved methods have been developed to prevent a wasteful flood of oil; sometimes they cannot control them but they do as soon as possible.

In the testimony before the Corporation Commission in Case No. 10,326-13 relative to amending order No. 5292 so as to shut down the Oklahoma City field until those wells which are under-produced catch up with those that are even the references to waste will be found on page 115 where Mr. Franklin testified that to force the operators to

take any price for oil would result in great economic and actual waste; and on page 202 where Mr. Smith testified that to shut the wells in for a period of from 60 to 120 days would injure them materially, that is that the eventual recovery of oil would not be as great as it would otherwise so that instead of preventing waste it would result in actual underground waste; and at page 206 where the same witness says that the wells which they compel to shut in will be materially damaged, and again at page 214 he says "in my opinion, proration has injured the field;" and at page 220 that the proration orders shutting in these wells at various times has materially damaged the wells which has caused a material loss of oil that cannot be receovered.

[fol. 317] The Office of the Attorney General of the State of Oklahoma, Oklahoma City

January 23, 1931.

Hon. John H. Cotteral, Judge U. S. Circuit Court of Appeals, Tenth Circuit, Guthrie, Oklahoma.

In re Proration cases # 1156, #1173, #1175, #1176, and #1183, Equity, U. S. District Court for the Western District of Okla.

Dear Sir: There is herewith transmitted a copy of the counter abstract of evidence as to waste, submitted on behalf of the Corporation Commission of Oklahoma, defendant in the above numbered cases, the original of which was filed on yesterday in the case of Champlin Refining Company vs. Corporation Commission of Oklahoma, No. 1156 in Equity.

Similar copies of the above mentioned abstract are today being transmitted by mail to Judges Williams and Kennamer, and also to counsel representing complainants in the above numbered cases.

Very truly yours, for the Attorney General, Jesse L. Ballard, Assistant Attorney General.

JLB:AC,
gl,
Encl.

[fol. 318] IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

In re Proration Cases No. 1156, No. 1173, No. 1175, No. 1176, and No. 1183. Equity

CHAMPLIN REFINING COMPANY, Complainant in No. 1156; Marco Oil & Royalty Corporation, Complainants in No. 1173; Century Petroleum Corporation, Complainant in No. 1175; Oils Inc., Complainant in No. 1176, and Capitol Producing & Refining Company, Complainant in No. 1183,

VS.

CORPORATION COMMISSION et al., Defendants

COUNTER-ABSTRACT OF EVIDENCE AS TO WASTE SUBMITTED BY DEFENDANTS

The defendants do not agree that the Abstract submitted by the complainants in the above entitled cause contains all of the evidence nor an abstract of all of the evidence submitted before the Corporation Commission upon the hearings held prior to the entering of the various orders of which complaint is made in the above entitled cause in this Court. The defendants do submit that the abstract of evidence submitted by the complainants on its face shows that there was ample evidence before the Corporation Commission to show that the commission of physical waste both under ground and above ground was imminent in the event that the production of oil in Oklahoma was not controlled by the Corporation Commission and Proration Orders of the Commission.

[fol. 319] The Defendants further submit that although there was no testimony as to any present wide spread physical waste above ground, that the testimony also shows that prior to the enactment of the conservation laws there had been such physical waste above ground and that since the enactment of those laws such waste had been consistently prevented by conservation and proration orders of the Oklahoma Corporation Commission.

Defendants further submit that it was not necessary for the Corporation Commission, to find that there was at the time of the hearings or the making of the orders actual

physical waste above ground in order for such orders to be lawful, but that the power of the Corporation Commission extends as well to the prevention of waste which would occur were the orders not promulgated as to the prevention of waste which had already or was then occurring.

Understanding that the Court's request for an abstract of the evidence was addressed solely to the question of whether or not evidence had been introduced before the Commission justifying a reasonable apprehension as to physical waste if the order were not made, the defendants submitted the following in addition and supplemental to, and, in some cases, in contradiction to the abstract submitted by plaintiffs:

(Defendants-appellees' controverting abstract of the testimony taken before the Corporation Commission as to waste, as filed in this Court, was in a large part in the exact words of the witnesses; and is here by agreement reduced to narrative form, by the Defendants-appellees and so narrated as follows:)

[fol. 320] RAY M. COLLINS testified on direct examination that he had production in the Cushing pool and other new pools where there was an overproduction and at that time they let it go down the creek saying, "we could not take care of it; and our neighbors were running theirs through the pipe line;" that if there were no steel or wooden storage, or appreciable amount thereof to store oil permitted to be produced, it is a necessary result that oil must either go into earthen storage or be entirely wasted; that in earthen storage there may occur a loss of anywhere from 50 to 90% due to evaporation, absorption or washing.

On cross examination, beginning at page 100, the same witness testified that there is no waste going on in Oklahoma now whether the field is prorated or not; and that everything is running satisfactorily in Oklahoma now; that he wants to prevent actual waste which he says on page 101 is opening up a well and letting it go down into the ground; on page 103, that he wants proration to prevent actual waste for one thing and on page 104, that he would want a rule to prevent waste besides (a rule or order by the Corporation Commission stopping the tremendous drilling campaign in the Oklahoma City field). On page 110 he testifies

that he wants proration to prevent physical waste and to prevent one neighbor taking more oil out of it than his proportion. On page 111 Collins testifies in answer to the proposition and question: "If you take oil out from under me, I am going to run my well wide open. That is not physical waste, is it?" "That if I let it go down the creek it will be." He further says that he cannot name a producer in this field that opens his well and lets the oil run down the creek at the present time or in the last 5 years.

On page 112, he testified that if you lift proration there will be actual waste, for the reason that a man who has no pipe line facilities or cannot sell his oil will let it go down the creek; that he doesn't know of any oil being stored in earthen storage and that he hasn't known of any since about the Cushing field days which he says was about 15 or 16 years ago (page 114).

[fol. 321] On page 115 in answer to the proposition presented where a man owns his own well, pipe line, refinery and marketing facilities for the finished product and the question as to what harm there would be in letting him run to full capacity that "as a matter of waste, if I had an offset well and you opened your well and I was not able to take care of mine, I certainly would build earthen storage and try to take care of it in that way." On page 116 he testifies that his only reason is that it would be taking more oil from his neighbor than what he considers to be a due proportion.

At page 178 Collins testifies that they intended to include the Osage reservation in the proration orders, and at page 180 that he doesn't believe there is imminent danger of waste being committed there; and further that prior to the time he made this application he did not ascertain whether there was any waste in those fields other than the ones heretofore prorated. He testifies also at page 180 that in his judgment there are many areas, many wells, many leases which will have to be given special attention by the Commission to prevent actual waste by reason of this order; that is wells making water and wells that have no gas pressure to speak of and others that are poorly equipped, if this order is forced on them and given strict enforcement, that will be positively injured rather than benefited.

At page 181 he says that if the little wells producing from 5 to 25 barrels per day which the contemplated order places under proration were permitted to run 100% waste would be imminent in those fields; that the waste would occur by the fact that this purchasing power has been transferred to Oklahoma City, and they would not be able to take care of it. At page 183 he states (referring to fields of small production) that there has been no waste in the past.

At page 201 Collins says that his statement that there is no waste and has been no substantial waste in the State of [fol. 322] Oklahoma is due to the fact of these very proration orders that have been issued in the past.

At page 215 Collins in answer to a hypothetical question "supposing the I. T. I. O. Co. had a demand for 100,000 barrels of oil per day at 50 cents per barrel which they wanted to sell and the other producers wouldn't take that for their oil, if it would be waste for the Commission to let them sell it" testifies that it would be waste (pages 216-217). At page 218 he says his reason is that the other fellows would have to run the oil into earthen storage. He states further that if they could show their was actual demand and no waste he would certainly recommend it.

At page 223 Mr. Collins testified that "we" did not take into consideration the financial ability of a correlative owner to drill a well; that as long as he (a correlative owner) took ratably as the common pool was prorated, there would be no waste. He says that he wouldn't try to protect any correlative owner of the common supply because he hasn't got a well on his lease (p. 224).

At page 252 Mr. Victor H. Smith testified that his company has one well in the Oklahoma City pool and that they can handle a percentage of the production from that well without any waste occurring in connecting with it, but not all the potential which was rated as 150,000 barrels per day based on some two hours' gauge; that they could handle possibly 30,000 or 40,000 barrels per day through their plant and other facilities without waste, except perhaps waste of gas; that if they should find it would produce more than they could handle it would be operated so as to commit no waste of oil (p. 253).

At pages 270 and 271 Mr. Smith testified that if the Oklahoma City field was opened up and no limit placed on production all the little refineries in the state would open up and "the first thing you know we would have 3-cent gasoline," but there wouldn't be any waste in connection with 3-cent gasoline because "we would get a lot more airplanes."

[fol. 323] At page 273 Mr. Smith testified that if oil were to do down in price to 50 cents the big companies would build tanks to put it in and that there would be a waste in connection with the storage of oil in steel or earthen tanks. At page 275 Smith says he doesn't believe there would be any waste of oil if the Commission should set aside its order and turn everybody loose in the Oklahoma City pool, unless the producers would be foolish enough to try to put light oil in earthen storage. In answer to the question: "Isn's it a fact that in every flush field that we have had in Oklahoma w-ere we didn't have proration they have put it in earthen storage?" he says: "I wouldn't say so on light oil." Upon being asked if they didn't do it in Cushing he replied, "Yes, if you go 'way back in the old days. They didn't have anything else to do with it." He says they did that at Smackover but not on light oil. He states there is waste on heavy oil in earthen storage but not as much as on the light (p. 726). The small producer would take the crude as far as his facilities would permit and without waste. If the larger producer cannot ship all of his oil out he will keep his wells shut in until he can increase his facilities so as to handle more (p. 277).

Mr. Dye, testifying, at page 300, says that to shut in wells entails waste of oil because "if you shut in a well you never get the maximum production back in some cases." The witness further testifies at page 304 that he has been engaged in the oil business since 1916 and that they have never had any waste; that he doesn't know of any waste in the production or handling of crude oil anywhere and that the question of waste is not bothering anybody at this time as far as he knows.

At page 308 the following question was asked: "In your judgment, if proration orders were lifted by the Commission in that field (Oklahoma City) and that field was opened

up, would there be any waste of crude oil or would there be any taking out of proration by one operator of a well as against another?"

[fol. 324] The witness, Dye, replied: "There would be a discrepancy in the taking of oil; but I doubt whether anybody would allow the oil to flow down the creek. They would probably keep their wells shut in if they couldn't sell it." At page 309 he says it is problematical as to whether there would be any waste of crude if the lid were taken off and that field were opened wide up; it would depend, necessarily, upon how the operators in the field would work.

At page 328 Mr. Dye testifies, relative to waste, that if all the producing companies that have manufacturing and marketing facilities would take the position that they were going only to produce and manufacture their own products it would cause a lot of waste and abandonment of old wells if they continue to drill the way they have been.

Mr. E. B. Reeser, testifying, at page 333, states that if production were in excess of reasonable market demand the condition of waste would follow. At page 334 he says by physical waste he means that "whenever you produce oil in excess of the demand it either goes into earthen storage or tanks; or down the streams or water courses, and in either event loss results." He says he doesn't know of anybody in Oklahoma today that is running oil into streams, nor of anybody that is putting it in earthen storage, or of anybody that has in Oklahoma within the last 10 years. To the question: "Then there is no running down the streams nor putting in earthen storage, so your idea, so far as Oklahoma is concerned, Oklahoma is not now suffering an economic waste?" he replied: "No; I am talking about what would result if more than the market demand were produced." He states again at page 335 that there is none run down the streams but that physical waste would result if a volume greater than the market demand were produced; that would result if put in steel storage by evaporation. At page 338 he states he doesn't want an over-supply because it would produce waste by placing it in steel tanks; and in that event you would have an added waste of *of* the cost of producing your tankage, and then the evaporating losses. He says: they should be required to stop storing oil in steel tanks [fol. 325] because that would stop waste by steel tankage.

Mr. Reeser testifying at page 391 says that if there were not restrictions of production there would be actual waste; that waste has been prevented by the orders of this Commission from time to time; that prior to the time we had the law under which we are now operating there were conditions of actual waste in times of overproduction; that there was earthen storage in Oklahoma; that there was waste and that there was oil going down the creeks.

Mr. C. C. HERNDON, testifying, at page 403, says that in his judgment if there were not a proration order in effect, or if one were not continued in effect, there would be actual waste of crude oil in the State of Oklahoma; that he considers such waste imminent if no such order were made; that the potential production of crude oil in the State of Oklahoma is in excess of the reasonable market demand for it. At page 429 the same witness states: "Where the potential production of big flush wells in the aggregate largely exceeds the reasonable market demand, then to permit one man, because he happens to be equipped with these things, to operate his wells to capacity or above the level that can be maintained by others, either induces waste on the part of the others or causes the loss of other oil to the other man, which in turn leads back to waste, because under those circumstances men protect themselves in the best way they can."

Mr. Herndon testifying at page 437 says he knows of no wells in the Stephens County field where the oil is being wasted and at page 439 he says that up to this time there is nothing wrong with the way the oil has been handled in Stephens County, but there will be something wrong if they are not brought under this proration order because there will be a transference of purchasing power to Oklahoma City.

At page 441 he testifies that in figuring on cutting down the production in Stephens County as keeping it cut down and preventing further development by test wells that is now in effect under the proration order they have not considered the welfare of the producer of oil but rather the [fol. 326] alleviation of waste in this state during this time of overproduction. He says at page 442 that he is not assuming that the producer in Stephens County has committed any waste but he thinks he will within the meaning of the

statute. He doesn't know where in Stephens County any man has committed waste in any sense but that it is imminent; that waste will occur. That it will be done by production of oil in excess of the market demand for it. If the Stephens County people increase their production 500 barrels per day that will constitute waste, if there is no market demand for it. If there is a market demand for it, it will not.

At pages 455-456, Mr. Herndon answers the question: "You would not waste any of your oil, would you?" with the reply, "I dare say we would."

Mr. A. V. HOENIG, testifying, at page 466, says he doesn't believe the full production of the Oklahoma City field could be produced without waste and that in his judgment the continuance of some sort of a proration order is necessary to prevent waste in the field; and at page 467 that to produce this field without restriction or proration would result in a very material waste of oil and gas.

Mr. OTTO BRADFORD, testifying, at page 531, says that in his judgment the Oklahoma City field could not be produced at its maximum production without physical waste for there is no way for a good part of the oil, at present, to be handled; that if the wells were all producing he thinks it would necessarily result in earthen storage or actual escape down the streams; at page 532 he says that he knows of no demand here for purchasing oil to be put in storage.

At page 533 he states that it is his opinion if they were to open up all the wells in the Oklahoma City field they would put it in earthen storage; but that they could keep their wells shut in if they would. At page 534 he says he knows of no big oil company who now stores oil in earthen storage because there is no need of it, nor of any producer of oil that runs it down the creek—that that is a past matter of many years ago.

[fol. 327] At page 536 Mr. Bradford was questioned as follows: "Assuming that testimony to be true, and assuming that there is a refinery in this city with an outlet running into this field and has its own production in this field and it takes that production and runs it to its own pipe

line, refines it in his own refinery and markets it th-ough its own marketing facilities, in the usual and ordinary way that refining business is carried on, wherein would there be any waste in such a transaction?" He answers: "There probably would not be any waste in the operation of that particular one well if the offset wells would remain shut it." He states this man's activities would not be waste but that it would probably result in waste. It would result in waste because if he had the offset well he would run it the same way—to the pipe line, tank cars or turn it loose. He says if he could not sell it he would let it run down the creek.

At pages 540-541, the same witness testifies that to open the field up would necessitate the use of earthen storage; that there is not enough available storage to take care of it though they could probably have built tanks along from time to time so as to have had plenty of facilities for taking care of it.

At page 547 the witness testified that some wells have gone dead but that he is not a production man and does not know the cause. These wells were all in the lime production. Water swallows them quickly.

Beginning at page 555 and continuing through page 557, Mr. Otto Bradford testified that he was acquainted with the Healdton field in the days of its glory in which a situation was created (which approximately gave rise to the present law), where the thousands of barrels of oil were put in earthen storage, plus that which ran down the creeks from which there was enormous wastage involved by evaporation, seepage and running down the creek; but the numerous skimming plants erected on the creeks did not in any way recover all the oil that went down the creeks; that he did not know the per cent of earthen [fol. 328] storage but that he knew of several earthen storage tanks that were built; that these storage tanks retained some of the oil but that some was lost by seepage, and quite a little was lost by excessive rains which would soften the dams and they would go out. This was not due alone to the fact that the production was more than the market demand but that the only pipe line in the field, Magnolia, could not possibly take care of all the production. They ran their own and a little besides so the other fellows produced any way they could to hold it. At page

559 he says all this took place about 1914 and at page 560 he says this field produced low gravity oil and that the higher the gravity the more the evaporation.

At pages 568-571, Mr. J. R. TRAVIS of Duncan, refiner, pipe line owner with refinery connected with 195 wells and with many years in the business, qualified as an expert. He states he was in the Cushing field; that there was no oil went into earthen storage during the Cushing boom, there was some that went down the creek which occurred when they were bringing in the wells and did not shut them in properly or occurred when they were swabbing the wells after the gas pressure went off and the big waste occurred in 1913 and early part of 1914, and in 1915 or January, 1916, the waste had ceased. He purchased oil in the Burnett field, Cotton County field, Stephens County field, Oklahoma City field and has been out there many times, and said, "I have never known of any deliberate waste where they wasted it purposely, never in the history of my experience in the oil business." In the Cushing field oil was wasted on account of the equipment not being right to hold it. They put it in wooden tanks and they leaked and were not well fixed to take care of the oil. They drilled a lot of those wells there without even having a mastergate, but under the improved modern methods producers are equipped with steel tanks. There are no wooden tanks any more, all tanks are steel and no earthen tanks for storage that he knew of. He says we hear nothing of that kind any more. The various ways that crude oil in the [fol. 329] process of production can be wasted, or if when bringing in the well they are not properly equipped in case of swabbing and when they are shooting wells all those conditions will exist whether there is a proration order or not, and the proration orders pretend to have nothing to do with the bringing in of the wells or the control of the drilling. "With our modern methods of handling I think there would be no waste to amount to anything unless it might be in the shooting of the well," but the proration order has nothing to do with that and the witness knows of no other kind of waste that occurred in connection with the production of crude oil. He has been in the business about 30 years.

At pages 584-585, Mr. Travis states that there would be no waste if he were permitted to take his oil out, run it through his pipe line and into his refinery; that the only waste he could see would be a reduction in price, that he doesn't know of waste now such as it has been defined by the various witnesses. Again at page 587 he testified that he has his own pipe line and marketing facilities and that absolutely no waste occurs in connection with the handling of it.

The said witness testifies at page 589 that you can't shut a well in without hurting it. He says, "You have no business drilling that sand. If you leave the drill out of the sand you won't hurt the sand, but once you drill it you had better produce it." At page 590 he adds, "Because it goes somewhere. I don't know where it goes. The water comes in on it, and if the water wouldn't come in on it the gas goes somewhere; the gas gets away from you." He states the only remedy for overproduction is the cessation of drilling.

Mr. Travis testifying at page 604 says the situation will take care of itself if let alone and there will be no waste. The Corporation Commission or the farmer will not let you run it down the creek. He has never known of any going down the creek maliciously or any other way in the last 15 years. Sometimes they will let a well get away from them (p. 605). He says, there has been no oil wasted and there would be no oil wasted unless it happened like a wild well out here of the I. T. I. O. that got away from [fol. 330] them. There has been more oil wasted, I expect, in this field than any other field in the state in the last 10 years which he says is even under proration and none of it done on purpose for that would happen whether there were proration orders or not.

The same witness testifying at page 629 states he is tied onto 195 wells in the Stephens County district; "there is not a well that I am tied onto, with the exception of one, that it wouldn't ruin it to be shut down." At page 630 he says, "I have always been told and thought that we must not shut them in. I have had a producer come to me at 2 o'clock in the morning and get me out of bed so I could run his oil, if I didn't he was going to have to close the well in and ruin

it. I have heard nothing contrary until the last year or two."

In reply to the question as to what would be the effect on a well of shutting it in for a certain number of days under the proration order the witness says that "all the wells that I have ever had any experience with the water either came in or the sand paraffined up. If the water comes in it is hard to ever get it off the sand. If it paraffines up you might shoot it and get it off the sand." As to the effect on the ultimate recovery of a pool like that at Oklahoma City of shutting in the wells that it would hurt them if allowed to flow wide open but to pinch them in and let them flow some all the while would help the wells.

At pages 659 and 660, Mr. Travis on cross examination testifies that there are some oils you can't waste by putting it in earthen storage but most Oklahoma oil would be wasted if put in earthen storage. If put in tight steel storage he knows of no waste that would occur. There is some initial loss by evaporation. He stored some in Stephens County 10 years ago and there is probably a 2% waste there. He says at page 663 that it would be a crime to put Oklahoma crude in earthen storage outside of a little heavy asphalt base crude but that he doesn't know of any earthen storage in recent years. He states there would be a small loss if put in steel storage and left for any appreciable time. He doesn't know anything about the Smackover field or of [fol. 331] earthen storage used there.

The same witness at pages 671-673 says he is not favorable to any kind of storage except in cases of emergency like we have now; that oil is a lot better out of the ground in storage than it is in the ground mixed up with salt water, if you tap a field you ought to go ahead and operate—that it is better to take it out after it has been tapped; that the loss would not be near as much by storing it than it would if you leave it in the ground after the field has been tapped like this one. At page 672 he says that if your storage is tight, the ordinary Oklahoma crude will probable lose from 1 to 3% over a year and then it won't lose any more; that there is some loss in handling high gravity crude or gasoline any way you handle it whether you have proration or not and tanks are strapped 3% short to cover that whether they run it immediately to the refinery or not. He states at page 674 that he knows there is 100,000 barrels of $3.00 or $2.70

oil stored in the Duncan field and that it has been there over 9 years.

Mr. A. V. Boswell, after stating that he has been connected with the oil business 30 years as a hydraulic, petroleum and mining engineer, says he has had experience at Bartlesville, Kiefer, Glenpool, Ardmore and Oklahoma City. He says at page 711 that his experience has been in the drilling in of any wells that he has operated in, as long as you keep those wells flowing and allow them to flow freely, you are going to get a full production, but when you close a well in, either completely or partially, you are going to ruin, to some extent, the production of oil from that well. He says we have tried it several times, at least in 5 fields in Oklahoma and that has been his uniform experience without any exception.

He says at page 712 that it has always been the individual engineer's judgment upon which they all agree, as far as he knows, that it is injurious to a well to shut it in. There are three ways it is injurious to a well to shut it in. You might kill the well altogether with water. If it has a parafin base, those little crevices where the oil and gas comes from might become what we call leaded up, or closed up by the [fol. 332] parafin, or the substance we call parafin. If it is asphaltum base the same thing applies. Those wells are going to be injured. That has been our advice as long as I can remember, even back in the Pittsburgh field in Pennsylvania. Confining it directly to the Oklahoma City field, the condition of the sand on the west side of the field would perhaps not injure a well quite as much as on the east side where it is a lime formation. I would consider the well would be ruined if shut in 65 days.

The witness says at page 713 that the history of the wells is that when you reach the lime formation you are much more liable to get salt water than you are in the sand formation. In Oklahoma City those that have been shut in when opened again have not produced like they did when they were closed in. There has been more wells on the east side of the field that have decreased in production so that actual experience bears out the theory. He says shutting in these wells will have no tendency to conserve the oil, either for the use of future generations or for any other time. The losses from closing those wells would be so much

more than the losses would be from the development of the wells so that in his opinion the shutting in of the wells causes waste rather than conservation; after the sands have been penetrated, it is much better to keep them open. These things are just as well known as the multiplication table. He says, "We fellows who have observed those things and examined them have found that is true in every instance. He states this was true in Bartlesville, Glenpool and Ardmore.

At page 715 he says that when a field comes in there is always flush production caused by gas rock pressure, and gas pressure which is larger in the beginning and later recedes; if the wells are permitted to produce it keeps all the avenues open. He states at page 718 that he has observed the Hall-Briscoe Well No. 1 which came in at 25,570 barrels and the flow was retarded by being closed in so that they are now able to get only 18,000 barrels; and on page 719 he says shutting in the well was what injured it.

[fol. 333] At page 722 the same witness testified that he doesn't think there is any wastage of oil in this field at all; that he has never seen any; that the proration orders have not cut down actual physical waste.

The witness states at page 723 that when there is actual physical waste that is the fault of the one who owns the particular well which is governed by statute. He says there is no reason why one should be penalized when he is not committing waste because some one is committing waste; there could be no erroneous waste in connection with the operation of this field if it were permitted to run wide open. At page 724 the witness says any producer should be sent to the asylum if he opened up his wells and let it run wild out into the field.

Mr. Boswell states at page 735 that when you cut off the production you are going to hurt the wells, and when you hurt the wells you are creating a waste right there; you are wasting your own substance. Again at page 738 he says shutting in the wells to 25% would cause a waste and loss; by restriction as it is we will have ruined wells; again at page 739 he says it would injure the wells to shut them in to 25%. At page 740 he says the better way is to let it flow unrestrained if you want to get the full value; that it is better to let it run steadily.

At page 741 the following question was asked:

"Now, for the first time in this proceeding, I would like to ask you this: Having solely in mind the advantage of the people of the State of Oklahoma, and we will say the future generation of the people of the State of Oklahoma, as influenced or affected by our great natural resources, crude oil, which is the better way to conserve those interests, to let these wells run freely, except as restrained from physical causes, or to have them run under proration orders as they are now being run?

A. Well, the former, I should say, would be very much better.

Q. Now, why?

A. Because if you want to adjust this matter and get the oil that is already developed, you have got to let it run unrestrained. Now that is going to run the price of oil down some, and when you do that, that is going to stop the fellows in the wildcat field, and there is the only place it can be [fol. 334] regulated, because when you drill into an area or into a triangle like this and start development, you cannot stop that oil from flowing. If you do you are just as liable to ruin your well as you are if you drop something in it and ruin it."

At page 742 he says he thinks it would be better for the consuming public and also better for the State of Oklahoma as a state and an entity that these wells should be permitted to run open continuously, in the meantime restraining actual physical waste. At page 769 he states that he thinks the proration orders have increased waste by reducing the ultimate output of the well.

The same witness testified at page 777 that he doesn't think there would be any waste of oil at all if you opened the Oklahoma City field wide open; it would go to markets and storage. At page 779 he says the average loss in storage is about 2% in steel tanks which you have lost but if you shut in a well you are going to lose 25 to 30%, maybe 50%, maybe all of it. He testified at page 780 that he doesn't know of flush fields running oil down the creek; that wells got away at Cushing and Healdton just as the Mary Sudik at Oklahoma City and some oil was lost; that was an accident. At page 781 he says there is nobody that is putting oil in earthen tanks now and he knows of nobody who would if they opened this thing up; producers in no

state whether they have proration or not are going to put it in earthen tanks.

Mr. JAKE HAMON, testifying, at page 810, makes the statement, "If this proration plan is put into effect we believe that it will save our wells from waste; if not, economic waste will certainly be obtained, because the small producer cannot afford to build steel tankage for his oil. The cost of the average tank for the average small production is prohibitive. Our production will be wasted.

Beginning at page 813, Mr. L. C. HIVICK says with reference to the waste of crude oil in the last 10 years in production or marketing that "the new equipment has cut out considerable, cut out, I might say, seven-eighths of the waste of oil to what it was in the early days, such as control heads and gate valves, Christmas trees, and different [fol. 335] ways of equipping them up. They have now all steel tanks, and we used to have all wood and they were leaking.

At page 810 he says if the proration orders were lifted, there would be no more waste than there is now. Proration orders do not affect waste. He states again, at pages 818-819, that he does not think lifting proration orders will have any effect upon the matter of wasting of oil. He says he couldn't see where it would waste any more to lift the proration orders unless the man was just an outlaw and violated the orders that now and always have been here to preserve the state's resources.

The same witness states at page 823 that he doesn't think they would open up the wells and let it run out on the prairie if the quantity taken out was greater than the shipping facilities; he says he never heard of it in Cushing or Seminole and he was in all of them; the only cases of that kind would be where the wells got away. He says they have not had proper equipment up until late years and some oil would be wasted until they could "harness" up properly. There would be some oil run down the creeks from the sun heating against the wooden tanks.

The witness says at page 824 that it has always been conceded that it hurts a well to shut it in; in some ways shutting in a well has a tendency to create waste of crude oil; you would get more oil, a lot more, if you keep your well open. As a matter of conservation he states as long

as he could sell it he would let it run. At page 837 the witness states, "I don't think they are wasting any more oil here because they have proration, than they would if they did not have it."

Ed Trippett, testifying, at page 859, says, "as a general proposition I think that the closing in of wells will hurt them. Some cases it does not; more cases it does." Where the well is producing some water and the gas pressure is weak to shut it in would ruin it in course of time. He says he has seen wells that were good oil wells shut in that were not making any water and when they opened them up for at least three weeks they would not make any oil at all, [fol. 336] and others making both oil and water that never came back. Some were opened up in Oklahoma City that were not making any water and it did not seem to hurt them.

The same witness testifies at page 869 that if you want to conserve the natural resources of crude oil and prevent the waste thereof don't drill into it and if you have it would be better to get it out of these while you can; there is a certain amount of waste no matter how you handle oil.

Mr. Trippett states at page 873 that he thinks it hurts a well to shut it in if it is making any water at all. At page 874 he says he thinks the south wells in the Oklahoma City fields are making water. He states again at page 881 that he thinks there is more waste under proration than without because oil is left in the ground that can never be recovered.

The witness states on page 890 that if he owned a lease from which he could not dispose of his oil although his neighbors could he would leave his in the ground. At page 901 he say he can sell his full production without causing any waste of crude oil.

At page 921, Mr. William A. Springall, a representative of the M. K. T. Rd. Co., says if they were permitted to handle as much oil over their road as they might they could handle it without any waste of oil.

Mr. E. W. Jones, testifying, at page 915, says that it is not the desire of any operator in the Oklahoma City pool or any other pool in the State of Oklahoma to waste crude oil; we naturally would not waste it and if run to full

capacity there would be no waste; I would just produce and sell the amount of oil that I could sell; as a matter of business or enterprise and judgment, we would not permit it to be wasted, as a matter of economical waste we would not do it, or as a matter of physical waste we would not do it; every operator that is honest with himself will produce only the amount of oil that he can sell. At page 946 he states that he has heard a lot of them say that they [fol. 337] would produce it right on the ground but "I have been operating a long time, and I have never seen it done deliberately."

At page 949 Mr. Jones says that it has been the general opinion of operating companies in the oil business every field I have ever operated in, and I have operated in a number of them, that to shut in a well completely has been known to kill it entirely; neither I nor any other operator in the Oklahoma City field knows "what the effect is to shut it in;" he says: "I know of one well in Texas that came in for 25,000 barrels per day, they opened it to fill their tankage and shut it off for additional tankage, they shut it off and opened it, and it has never produced a barrel of oil to this day." He says the pinch in is the recognized, modern and better way to do it because it keeps the channels open to the well (R. 950).

Mr. Jones, at page 983, in answer to questions asked by Commissioner Capshaw, said "I operated in Seminole and Bowlegs and Little River, and all of the fields of recent flush production in Oklahoma, and I have not seen any wastage of oil since the days of Spindletop and Smackover and some of those big flush fields in Texas." And again at page 985 he states "I never did see any waste (referring to the Seminole fields). I drilled lots of wells there. So far as physical waste is concerned in Seminole and Little River and Earlsboro and all of those fields, I never saw physical waste there unless a well got wild, just like the Mary Sudik did." He states further that he had never heard, in his lifetime, of a man anywhere deliberately opening a well and running it on the ground and not trying to take care of the oil. He saw it run on the ground in earthen storage tanks and that was customary in Goose Creek and all through South Texas—they never figured that a waste. He said that would cause

a lot of it to go down the creeks when they had a big rain just like storms killing people when you didn't expect it to come.

Mr. W. P. HOSEMAN, testifying, at page 997, says that where the wells are opened intermittently there is a loss of from 10 to 20% which is not recoverable—that is, lost [fol. 338] forever. He figures (p. 998) that 10 to 20% more would be recovered under the pinched-in method. Shutting in after reaching the oil sand results in wastage over what would be recovered in oil if the well were permitted to flow steadily, even though on a percentage flow. The orders in force result in a direct waste of the available oil underlying the Oklahoma City field, which would be underground waste of 10 to 20%. He says, on page 999, that the cause of the recoverable oil being decreased when the well is shut in from time to time over and above the amount it would be if permitted to flow all of the time although pinched-in is due to the fact that there has been established a pressure gradient reaching out to what we might call throughout the drainage area of the well. There is a pressure gradient. That means there is a release of both gas and vapor from the liquid. When the well is shut in, the area of drainage or the drainage volume has a decreased pressure in it which has to be equalized. That pressure is equalized largely by a continued release of both gas and vapor from the liquid, and the release of that gas and vapor, which would otherwise have remained there and kept the liquid in a state that it would flow relatively faster, is the cause of the loss in his judgment.

The witness, after having shown a wide and thorough research into the Oklahoma City field conditions, states on page 1001, "it indicates clearly a very rapid rate of decline in the rate of production of the average producing well in the field." He says it indicates a material waste or loss otherwise recoverable of oil and gas. He says the average decline of the average wells from December 30, 1929, to July 28, 1930, was from 9,323 barrels to 1,403 barrels which is abnormal and was caused in his opinion by improper completion and operation.

At page 1038 of the record, the witness states that he is convinced there would be a larger ultimate recovery of oil if there were a pinched-in flow rather than an intermittent.

He states his opinion at page 1048 on the effect of the proration method of producing oil in the Oklahoma City field to be that the producing properties have been injured in that they will never yield the ultimate that they would [fol. 339] have yielded. He says "my understanding of waste would indicate that it constitutes waste."

The witness states at page 1054 that they ran oil to earthen storage in the early days because they didn't know the results and that it was sold on a different basis. He testifies that oil was run to earthen storage in the Smackover field in Arkansas.

At page 1057 the same witness states there would be from 1500 to 3000 barrels more per acre recovered if the wells were properly completed and properly operated. About one-half of the loss is due to improper operation "under proration." At page 1090 the witness states that if one man were allowed to flow his well wide open and others were required to keep theirs closed on account of marketing conditions there would be a disproportionate taking and a loss in ultimate recovery under the same conditions which would constitute underground waste. He states the same thing again at page 1095.

Mr. Hoseman says at page 1104 that he has never heard of anyone who purports to open up wide the wells in the Oklahoma City field, nor of any waste being committed in other fields, nor of any limitation of the transportation facilities. He states further that he knows of no reason why production in other fields should be lessened or restricted, nor of any reason why any good would be accomplished by such a proration order.

The witness states again at page 1122 that he has never heard of any one who has insisted upon or advocated a wide open flow in the Oklahoma City field except loose talk.

At page 1146, Mr. CHARLES W. WILKEY says that the experience he has found from association with men that have been dealing in the oil game for 25 years or longer is that a well that has been shut off will cause the well to decrease in production. He says further at page 1151 that shutting [fol. 340] down the wells caused a material decrease in production.

Mr. J. R. McWilliams, testifying, at page 1175, states that he does not think the operation of the proration orders has caused a decrease in the ultimate recovery of the pool. He states that with higher overall pressure it is logical to assume that it would produce more oil from the field as a whole than it would if we had no proration orders.

The same witness states at page 1180 that the head of the gas which has accumulated while the well is shut in and must blow off before any oil can be produced causes a loss of oil—which is lost as far as the oil production is concerned.

Mr. McWilliams states at page 1194 that the production would have had a higher recovery under the pinched-in flow than under the intermittent time flow which would be relatively true in the future. Again at page 1200 he says that on account of the intermittent flow method in operation — those well there has been a considerable loss in ultimate recovery. He states at page 1206 that if you wanted to get the largest percentage of ultimate recovery from the wells you would take into consideration the different conditions existing in and about the well and then govern your operations accordingly; as far as he knows none of the wells did run wide open.

The witness states at page 1207 that if the Oklahoma City field were allowed to flow wide open in his judgment it would cause underground waste to occur; market conditions would cause underground waste if the wells were wide open and an operator could not dispose of all of his production in the ordinary channels of commerce.

McWilliams testifies that he was in the Smackover field (p. 1208) and that there was a very big loss there (p. 1209), that the tanks were made of sand, they would wash out and absorb lots of oil. Earthen storage was used generally and conditions were such that there was a very high percentage of loss that took place about 1924 or 1925.

[fol. 341] The witness states, at page 1212, that future underground waste could be eliminated by casing the well properly, pinching the well and proration. He says they might stream some of it off into the Mississippi River which would entail a loss and that to open this field (Okla. City) up would cause a terrific underground waste. He states at page 1213 that if "we" get 25% of our oil in the Oklahoma City pool we will do well while in Seminole they think

they have gotten 40% of the recoverable oil. Again at page 1216 he testifies further that they will do well to get 25% of the oil and therefore we waste 75% of the energy and that is really only a small proportion of that 75%, a part of the energy can be saved by putting it on a percentage run rather than on an intermittent flow.

Mr. CHARLES JACOBSON, testifying, at page 1223, states that the company he is connected with, Barnsdall, operates in the Osage and Seminole pools; that they have 93 wells in that locality and that there is no waste of crude oil in the way they are handling them; and at page 1224 he says they can control the wells so there will be no waste.

At page 1225 the same witness states that they are using no earthen storage and does not know that they have ever used any and that he knows of none being used in the Osage or Seminole fields. He says further that he knows of no one "that is so operating a well to cause physical waste," nor of any operators who are operating in a way not modern and up to date in handling crude oil. He says he can cite this Commission that no waste is occurring that ought to have its attention, and that that is true in the Osage Nation.

Mr. CHAMPLIN, testifying, at page 1235, says there was no waste in connection with the flush production in the Garber field. He says at page 1237 that they didn't open their wells up and let it run out on the ground because they did not want to waste it, that they have better sense. He says, "I don't think they would any more open up their crude and let it flow out than they would open up their pocket book and throw their money away." He states at page 1238 that proration in the Garber field would not in any way tend to reduce the waste of crude oil nor tend [fol. 342] toward conservation, having in mind the ultimate recovery.

The witness states at page 1245 that as far as his experience and observation goes in the Seminole pool there is no waste of crude oil over there in any way. At page 1263 he says he knows of no waste of crude oil being committed in the Oklahoma City field nor any waste being committed in connection with the production of crude oil anywhere in the State of Oklahoma. At page 1264 he says shutting in a well is very injurious; that wells are sometimes destroyed or lost by shutting them in and keeping them shut in.

Mr. Champlin says at page 1270 speaking of the Deaver pool that it can be produced at 100% of its possible production without waste.

At page 1291 the witness states he has heard of earthen storage but not lately, not in his time; that he doesn't think anybody would put it in earthen storage. He states at page 1292 that he has seen oil in earthen storage in the Beggs field but that was caused by a well coming in for a large amount and they were unable to take care of it so they temporarily put it in earthen storage and withdraw it as soon as they could get a pipe line into the field. He says he doesn't think that would be done in this field (Okla. City); 10 or 15 years ago they were not as well equipped to take care of producing wells as they are now; they didn't have control gates and often wells were brought in for a big production when they were not expecting it and the oil would go to waste.

The witness states at pages 1301-1302 that he is in favor of producing the wells wide open; that he thinks that is an economic way to produce oil and will not result in underground or surface waste; that there can be no underground waste. He says at page 1314 that he wants to commit no waste of crude oil and will not; that if a person did not have the market or could not sell his oil he would shut it in; that they don't have to waste it.

[fol. 343] Mr. William H. Atkinson, testifying, at page 1341, says that in his opinion shutting in the wells under the time plan does not injuriously affect the wells, that is the sand wells in the Oklahoma City field; some wells might be making water and it would hurt them and that in certain conditions it would pour water in and hurt the other fellow; it would pull the water in and in time affect the whole field, particularly the north where he is interested (p. 1342).

Mr. John Fuller, testifying, at page 1347, says, "beaming down the well—and this is general in every sand in the field, additional back pressure on the well increasing the gas-oil ratio would thereby reduce the ultimate recover;" again at page 1351 he says, "for the purpose of the largest ultimate recovery, I believe that intermittent flowing is better than pinched in."

Mr. WILLIAM H. ATKINSON, testifying, at page 1357, says if the proration were lifted he would probably run to open tanks, earthen storage, closed storage, or anything else he could get; at page 1358 he says he doesn't know of any one doing that now—because they prorate it; in the fields that are not prorated nobody is letting their oil run to waste but with the Oklahoma City potential they would.

Mr. C. C. CARLISLE, testifying, at page 1385, says he has seen indications of opening up wells and letting them run out on the prairie down the streams or into earthen storage but not recently; that the Prairie Oil & Gas Company does not do that intentionally; that improved methods have been developed to prevent a wasteful flood of oil; sometimes they cannot control them but they do as soon as possible.

In the testimony before the Corporation Commission in case No. 10,326-13 relative to amending order No. 5292 so as to shut down the Oklahoma City field until those wells [fol. 344] which are under-produced catch up with those that are even the references to waste will be found on page 115 where Mr. Franklin testified that to force the operators to take any price for oil would result in great economic and actual waste; and on page 202 where Mr. Smith testified that to shut the wells in for a period of from 60 to 120 days would injure them materially, that is that the eventual recovery of oil would not be as great as it would otherwise, so that instead of preventing waste it would result in actual underground waste; and at page 206 where the same witness says that the wells which they compel to shut in will be materially damaged, and again at page 214 he says, "in my opinion, proration has injured the field;" and at page 220 that the proration orders shutting in these wells at various times has materially damaged the wells which has caused a material loss of oil that cannot be recovered.

[fol. 345] Defendants' Exhibit "X", Record, p. 376, potentials Oklahoma City field, January and April, which is in words and figures as follows, to wit:

[fol. 346]

DEFENDANT'S EXHIBIT X

Acme Oil & Gas Co.

Lease	Well No.	Date well came in	January pot.	Date	Witness	April pot.	Date	Witness
Armourdale	1	12/ 3/30	46,850.52	3/17/31	W. U. Paul Lee Pinkstaff	42,686.40	4/ 3/31	W. U. Paul W. H. Vance
Addition Petroleum Co.								
Aungst	1	2/28/31	.....	.....	.....	61,939.50	5/ 1/31	E. G. Johnson C. M. Keeler R. C. Miller W. H. Vance
Anderson-Prichard Oil Co.								
Brown	1	8/27/30	13,488.72	1/16/31	Carl Bashara C. P. Mackentire J. M. Carter	10,808.78	4/14/31	T. T. Rogers W. H. Vance C. E. Long
Clark	1	2/10/31	.....	.....	.....	25,818.48	4/30/31	Carl Bashara W. H. Vance C. E. Long
M. Gibbons	1	10/23/30	2,628.12	1/ 4/31	Carl Bashara C. R. Fry Harry Valentine J. C. Stevens	3,313.20	4/ 1/31	Carl Bashara A. E. Jones Jack Critcher
M. Gibbons	3	9/21/30	4,659.12	1/ 6/31	Carl Bashara J. M. Carter R. E. Steel	3,433.50	4/ 3/31	Carl Bashara I. T. Hounold L. C. Rice H. J. Anderson J. R. Holder
M. Gibbons	4	3/ 3/31	.....	.....	.....	19,412.94	5/15/31	Carl Bashara Lee Wall C. E. Long

M. Gibbons	5	10/22/31	4,580.34	1/ 7/31	Carl Bashara Noel Chancellor R. E. Clark A. J. Hannah	3,282.00	4/ 4/31	Carl Bashara O. E. Bradley L. C. Rice J. R. Irvin
Graham	1	9/16/30	3,202.20	1/ 7/31	Carl Bashara Noel Chancellor R. E. Clark	2,703.84	4/ 6/31	Carl Bashara I. R. Irvin Virgil Swope
Habeggar	1	9/30/30	990.00	1/31/31	Carl Bashara E. G. Dahlgren C. E. Long C. L. Ray	1,006.26	4/14/31	T. T. Rogers W. H. Vance C. E. Long
Hathaway	1	2/ 9/31				34,928.46	4/18/31	Carl Bashara C. M. Keeler C. E. Long J. B. Abbott
Keys	1	9/14/30	8,276.58	1/31/31	Carl Bashara C. E. Long E. G. Dahlgren	6,044.16	4/ 5/31	Carl Bashara J. B. Abbott C. E. Long
Moore	1	10/30/30	3,654.72	2/ 3/31	Carl Bashara E. G. Dahlgren	2,534.24	4/ 5/31	Carl Bashara J. B. Abbott J. L. Irvin C. E. Long
Orphanage	1	9/21/30				1,543.50	4/21/31	Carl Bashara W. M. Coplin C. E. Long J. T. Leachman
Payne	1	4/ 2/31				23,518.98	6/ 4/31	Carl Bashara R. E. Steel J. L. Thomas Glen Davenport
[fol. 347]								
Pest House	1	8/25/30	4,312.62	1/ 6/31	Carl Bashara J. M. Carter R. E. Steel	5,269.08	4/ 1/31	Carl Bashara L. C. Rice E. F. Banks
Pest House	2	9/ 9/30	8,832.84	1/ 7/31	Carl Bashara Newell Chancellor A. J. Hannah	11,749.50	4/10/31	Carl Bashara Earnest May L. C. Rice

DEFENDANT'S EXHIBIT X—Continued

Lease	Well No.	Date well came in	January pot.	Date	Witness	April pot.	Date	Witness
Rayhill	1	1/26/31	.....	.....	.....	42,496.14	4/ 6/31	Carl Bashara J. R. Lloyd C. E. Long J. R. Irvin O. E. Bradley
Roosevelt	1	8/31/30	8,013.84	1/ 5/31	Carl Bashara Chas. H. Mee	7/121.16	4/ 1/31	Carl Bashara Jack Cutcher Melvin Roger
Roosevelt	2	9/19/30	14,161.32	1/ 4/31	Carl Bashara C. R. Fry Harry Valentine	12,531.60	4/ 3/31	Carl Bashara I. T. Hounold L. C. Rice O. E. Bradley H. J. Anderson
Roosevelt	3	9/23/30	14,837.16	1/ 5/31	Carl Bashara R. E. Dugger R. E. Clark	12,592.56	4/ 2/31	Carl Bashara L. C. Rice E. F. Banks
Roosevelt	4	9/26/30	11,468.10	1/ 4/31	Carl Bashara C. R. Fry Harry Valentine	6,804.00	4/10/31	Carl Bashara Earnest May L. C. Rice E. Browning
Roosevelt	5	9/27/30	5,997.84	1/ 6/31	Carl Bashara J. M. Carter R. E. Steel	4,140.36	4/28/31	Carl Bashara A. L. Rush C. E. Long
Sandnes	1	2/18/31	.....	.....	.....	38,744.94	4/28/31	Carl Bashara A. L. Rush C. E. Long A. N. Wilkinson
Westfall	1	1/29/31	.....	.....	.....	36,718.44	4/26/31	Walter McCann C. E. Long W. E. Best

Wilhoit	1	4/ 7/31	.....	.....	.....	30,606.48	6/11/31	Carl Bashara M. L. Young R. E. Steel
Wright	1	1/20/31	35,356.62	3/20/31	Carl Bashara L. C. Rice	34,028.58	4/ 2/31	Carl Bashara J. Chenault H. L. Chapman A. H. Otis L. C. Rice
				Blackstock et al				
Harvey	3	8/19/30	6,252.00	1/16/31	S. B. Woodson	4,371.60	6/ 8/31	H. V. Woodson C. M. Keeler C. E. Long
				Black Well Oil & Gas Co.				
Clemer	1	9/18/30	.....	.....	.....	3,186.00	6/ 2/31	H. B. Jones W. P. Mercer R. E. Steel
Carr-Page	1	2/23/31	.....	.....	.....	6,378.00	6/ 5/31	H. B. Jones Earnest May R. E. Steel
Schillings	1	1/20/31	.....	.....	.....	42,570.00	4/ 1/31	C. E. Randolph J. B. Abbott
[fol. 348]				British-American Oil Co.				
Echroat	1	10/18/30	54,328.32	1/19/31	Ted Green J. L. Chenault C. B. Wilcoxson R. W. Buzza	51,735.90	4/ 2/31	Ted Green Monroe Dumas B. M. Spratt
Holmes	1	6/18/30	16,105.14	1/ 6/31	Ted Green A. H. Housewright	15,013.56	4/ 3/31	Ted Green P. Beard I. S. McGrew
Holmes	2	8/23/30	11,318.40	1/14/31	Ted Green J. L. Chenault A. H. Housewright	10,452.48	4/ 5/31	D. Runyon I. S. McGrew R. Beard

DEFENDANT'S EXHIBIT X—Continued

Lease	Well No.	Date well came in	January pot.	Date	Witness	April pot.	Date	Witness
Holmes	3	8/16/30	19,146.96	1/14/31	Ted Green J. L. Chenault R. W. Buzza	9,970.98	4/22/31	D. Runyon C. M. Keeler B. E. Jetor
Holmes	4	12/15/30	43,890.24	3/ 2/31	Ted Green C. B. Wilcoxson	51,105.60	4/ 1/31	R. B. Beard Thos. Sultan P. H. Sullens
Holmes	5	9/10/30	54,196.80	1/ 6/31	Ted Green A. H. Housewright	51,242.16	4/ 5/31	Ted Green D. Runyon F. S. McGrew
Holmes	6	12/10/30	49,184.46	2/23/30	Ted Green A. H. Housewright	49,749.00	4/ 1/31	Ted Green R. Beard Thos. Sutton
Holmes	7	11/25/30	31,392.84	2/16/31	Ted Green C. M. Keeler A. H. Housewright	29,580.84	4/ 7/31	D. Runyon Munroe Dumas P. H. Sullens
Lindsay	1	4/28/30	7,671.36	1/11/31	Troy Ware C. M. Keeler Chas. Silvis	7,228.44	4/ 2/31	Ted Green P. Sullens Fred Homer
					California Operating Co.			
Stout	1	1/15/31	.....	.....	.....	3,685.50	5/ 5/31	G. W. Graham C. M. Keeler J. T. Leachman C. E. Long
					Capitol Producing & Refining Co.			
Jones	1	12/19/30	48,639.66	3/10/31	J. R. Stribling L. C. Rice	46,419.84	4/ 2/31	R. L. Waldy R. E. Dugger Joy Sneed E. L. Browning W. W. Bodine

Century Petroleum Co.

Barr	1	9/11/30	17,357.76	3/19/31	F. G. Blackwood... E. C. Rice Lloyd G. Elliott	17,046.30	4/ 1/31	F. G. Blackwood P. B. Banker
Jefferson	1	10/ 5/30	.....	.....	.....	5,058.18	5/26/31	F. G. Blackwood K. S. McNabb J. T. Leachman
McConnell	1	1/27/31	.....	.....	.....	45,393.78	4/ 6/31	F. G. Blackwood W. H. Vance Jack Cutcher
Wheeler	1	12/16/30	44,866.26	3/11/31	F. G. Blackwood... L. C. Rice E. S. Stevens	43,624.92	4/ 1/31	F. G. Blackwood S. S. Holme J. C. Norris E. B. Epperley
Wyatt	1	8/13/30	36,256.14	3/10/31	F. G. Blackwood... L. C. Rice	42,923.10	4/ 1/31	F. G. Blackwood R. E. Dugger K. S. McNabb

[fol. 349]

Champlin Oil & Refining Co.

McCalep	1	8/26/30	15,829.20	3/ 4/31	S. G. Wentworth... C. M. Keeler L. C. Rice	11,648.70	4/ 1/31	S. C. Wentworth Thos. Sutton C. N. Hughes L. C. Rice
Naden	1	8/20/30	16,756.62	3/ 4/31	F. C. Wentworth... C. M. Keeler L. C. Rice J. B. Abbott	9,915.54	4/ 2/31	F. C. Wentworth J. E. Jones A. B. Allen C. E. Long Virgil Swope
Seal	1	3/16/31	.....	.....	.....	440.88	4/13/31	F. F. Pipkin A. L. Rush C. E. Long
Seal	2	3/21/31	.....	.....	.....	818.16	4/13/31	F. F. Pipkin A. L. Rush C. E. Long

DEFENDANT'S EXHIBIT X—Continued

Chatham Oil Company

Lease	Well No.	Date well came in	January pot.	Date	Witness	April pot.	Date	Witness
Echroat	1	1/ 8/31	52,692.48	3/17/31	Ted Green L. C. Rice Duade Edwards	51,558.72	4/ 1/31	Ted Green J. B. Abbott
Lindsay	3	9/16/30	54,237.00	1/17/31	Ted Green E. G. Dahlgren J. B. Abbott	49,731.24	4/ 6/31	D. Runyon R. R. Wentworth C. E. Long J. T. Leachman

Coline Oil Company

Clauer	2	3/18/30	1,767.78	1/29/31	C. A. Bigbie C. E. Robertson	573.60	4/ 4/31	C. H. Bigbie R. E. Robertson
Clauer	3	1/15/30	1,929.36	1/ 8/31	C. H. Bigbie C. E. Robertson	1,712.82	4/ 4/31	C. H. Bigbie C. E. Robertson
Clauer	4	4/17/30	.....	.....	.....	2,431.80	4/22/31	C. H. Bigbie W. M. Copeland
Clauer	5	5/19,30	1,320.00	1/10/31	C. H. Bigbie C. E. Robertson	1,429.98	4/ 5/31	C. H. Bigbie C. E. Robertson
Clauer	6	6/26/30	5,316.60	1/ 5/31	C. H. Bigbie C. E. Robertson	4,202.32	4/ 3/31	C. H. Bigbie C. E. Robertson
Clauer	7	8/11/30	1,452.90	1/ 3/31	C. H. Bigbie Mearl Mays	1,759.92	4/ 3/31	C. H. Bigbie C. E. Robertson
Clauer	8	7/15/30	932.88	1/ 7/31	C. H. Bigbie C. E. Robertson	835.44	4/ 5/31	C. H. Bigbie C. E. Robertson
Clauer	9	7/21/30	6,784.98	1/ 5/31	C. H. Bigbie C. E. Robertson	5,721.66	4/ 8/31	C. H. Bigbie B. A. Harroun
Clauer	10	8/ 5/30	835.92	1/ 8/31	C. H. Bigbie C. E. Robertson	911.94	4/ 1/31	C. H. Bigbie C. E. Robertson
Clauer	11	9/27/30	10,203.36	1/ 3/31	C. H. Bigbie Mearle Mays	4,053.06	4/ 1/31	C. H. Bigbie C. E. Robertson

Clauer	12	8/ 9/30	934.98	1/ 4/31	C. H. Bigbie C. E. Robertson	1,507.14	4/ 7/31	C. H. Bigbie B. A. Harroun
Clauer	13	8/ 1/30	1,477.44	1/ 4/31	C. H. Bigbie C. E. Robertson	1,787.88	4/ 6/31	C. H. Bigbie B. A. Harroun
Clauer	14	9/13/30	565.68	1/ 6/31	C. H. Bigbie C. E. Robertson	691.44	4/ 6/31	C. H. Bigbie B. A. Harroun
Clauer	15	9/ 8/30	6,303.90	1/19/31	C. H. Bigbie C. E. Robertson	7,065.96	4/22/31	C. H. Bigbie W. M. Copeland
Clauer	16	8/13/30	600.00	1/10/31	C. H. Bigbie C. E. Robertson			
[fol. 350]								
Olds	1	6/27/29	1,764.18	1/ 8/31	C. H. Bigbie J. H. Smithers	1,190.82	4/ 1/31	C. H. Bigbie Clay Young
Olds	2	11/14/29	1,613.88	1/ 4/31	C. H. Bigbie J. H. Smithers	1,947.90	4/ 1/31	C. H. Bigbie Clay Young
Olds	3	10/30/29	10,228.32	1/ 7/31	C. H. Bigbie J. H. Smithers	9,828.66	4/ 3/31	C. H. Bigbie Clay Young
Olds	5	3/11/30	804.18	1/ 7/31	C. H. Bigbie J. H. Smithers	1,057.02	4/ 3/31	C. H. Bigbie Clay Young
Olds	6	2/23/30	599.82	1/ 6/31	C. H. Bigbie J. H. Smithers	764.94	4/ 2/31	C. H. Bigbie Clay Young
Olds	7	4/ 4/30	2,355.84	1/ 8/31	C. H. Bigbie J. H. Smithers	1,240.56	4/ 3/31	C. H. Bigbie Clay Young
Olds	8	9/ 9/30	488.52	1/10/31	C. H. Bigbie J. H. Smithers	598.56	4/ 4/31	C. H. Bigbie Clay Young
Olds	9	4/ 2/30	3,732.90	1/ 6/31	C. H. Bigbie J. H. Smithers	2,712.36	4/ 7/31	C. H. Bigbie Clay Young
Olds	10	5/25/30	3,479.82	1/ 4/31	C. H. Bigbie J. H. Smithers	3,247.56	4/ 4/31	C. H. Bigbie Clay Young
Olds	11	6/11/30	1,498.44	1/ 3/31	C. H. Bigbie J. H. Smithers	1,104.12	4/ 5/31	C. H. Bigbie Clay Young
Warren	1	1/ 3/30	.....	.....	.....	253.26	4/27/31	W. M. Copeland C. H. Bigbie
Warren	3	4/27/30	2,659.80	1/19/31	T. K. Davis Clay Young	1,925.22	4/ 6/31	C. H. Bigbie Clay Young

DEFENDANT'S EXHIBIT X—Continued

Lease	Well No.	Date well came in	January pot.	Date	Witness	April pot.	Date	Witness
Warren	4	3/10/30	8,907.60	1/ 3/31	C. H. Bigbie H. J. Smithers	3,919.62	4/22/31	C. H. Bigbie C. L. Jones
Warren	7	3/24/30	3,215.46	1/ 5/31	C. H. Bigbie J. H. Smithers	2,938.44	4/ 7/31	C. H. Bigbie Clay Young
Warren	8	5/23/30	2,377.02	1/29/31	C. H. Bigbie Louis Kaseillmy	1,062.12	4/22/31	C. H. Bigbie C. L. Jones
Warren	9	5/31/30	2,458.50	1/ 5/31	C. H. Bigbie J. H. Smithers	1,874.52	4/ 5/31	C. H. Bigbie Clay Young
				Continental Oil Co.				
V. Sudik	1	6/23/00	6,100.20	1/ 3/31	L. O. Hibbs J. F. Armstrong	961.08	4/18/31	L. O. Hibbs E. L. Browning
V. Sudik	3	7/ 8/30	14,807.58	1/ 6/31	L. O. Hibbs J. Chenault	8,164.14	5/12/31	L. O. Hibbs Clay Young C. E. Long
V. Sudik	5	11/ 3/30	510.36	2/ 8/31	L. O. Hibbs Lon C. Rice	450.18	4/ 7/31	L. O. Hibbs Floyd Jones
Vinita Park	1	10/ 8/30	20,176.62	1/19/31	B. D. Bigbie I. S. McGrew J. B. Abbott	17,894.88	4/ 8/31	L. O. Hibbs J. H. Beard
Vinita Park	2	10/25/30	8,116.20	1/19/31	B. D. Bigbie I. S. McGrew E. G. Dahlgren J. B. Abbott	5,441.52	4/ 9/31	L. O. Hibbs J. H. Bond C. E. Long
				Cromwell-Franklin				
Trosper Park	2	2/11/30	11,597.88	1/ 4/31	Jack Woolsey C. J. Owens S. R. Lonlall	10,591.92	4/ 2/31	H. M. Hales J. G. Cartland W. H. Janis J. R. Irvin

Trosper Park	8	4/19/30	8,525.76	1/ 5/31	H. F. Briggs E. G. Dahlgren D. N. Humphrey I. E. Atkinson	6,110.70	4/ 2/31	H. M. Hales J. G. Cartland J. C. Rosenberger
[fol. 351]								
Trosper Park	9	2/ 9/30	4,798.32	1/ 4/31	Jack Woosley C. J. Jones S. R. Lonlall			
Trosper Park	10	3/21/30	9,739.56	1/ 5/31	F. W. Lansen C. J. Jones S. R. Lonalll	8,199.78	4/ 2/31	H. M. Hales J. G. Cortland J. C. Rosenberger
Trosper Park	13	4/ 3/30	21,718.86	1/ 4/31	D. N. Humphrey F. H. Briggs I. E. Atkinson E. G. Dahlgren	24,390.12	4/ 2/31	H. M. Hales J. G. Cartland W. H. Jones J. R. Irwin
Trosper Park	17	6/ 7/30	17,943.12	1/ 4/31	Jack Woolsey C. G. Jones S. R. Lonlall	16,809.96	4/ 7/31	H. M. Hales J. G. Cartland F. H. McCann
Trosper Park	18	5/ 6/30	14,294.88	1/ 4/31	D. N. Humphrey F. H. Briggs E. G. Dahlgren I. E. Atkinson	14,422.80	5/15/31	H. M. Hales C. M. Keeler
Trosper Park	19	5/21/30	27,174.30	1/ 3/31	D. N. Humphrey E. G. Dahlgren	25,728.84	4/ 5/31	H. M. Hales C. M. Keeler L. O. Bradford
Trosper Park	20	7/24/30	19,239.54	1/ 5/31	F. W. Lauson C. J. Jones S. R. Laulall	19,427.64	4/ 6/31	H. M. Hales J. G. Cartland A. S. Webb
Trosper Park	21	7/16/30	27,292.24	1/ 4/31	D. N. Humphrey F. H. Briggs E. G. Dahlgren I. E. Atkinson	26,229.66	4/ 3/31	H. M. Hales J. G. Cartland L. O. Bradford
Trosper Park	23	7/21/30	11,488.50	1/ 3/31	D. N. Humphrey E. G. Dahlgren	11,457.06	4/ 2/31	H. M. Hales J. G. Cortland W. H. Janis J. R. Irwin

DEFENDANT'S EXHIBIT X—Continued

Lease	Well No.	Date well came in	January pot.	Date	Witness	April pot.	Date	Witness
Trosper Park	22	8/12/30	19,902.94	1/ 5/31	D. N. Humphrey E. H. Briggs E. G. Dahlgren I. E. Atkinson			
Trosper Park	24	7/23/30	3,307.50	1/ 6/31	D. N. Humphrey... F. H. Briggs I. E. Atkinson	2,220.48	4/ 2/31	H. M. Hales J. G. Cartland W. H. Janis J. R. Irwin
Trosper Park	25	8/17/30	22,091.88	1/ 5/31	F. W. Lawson..... C. J. Jones S. R. Loulall	24,144.24	4/15/31	H. M. Hales J. E. Bitler
Trosper Park	26	9/23/30	16,716.48	1/ 6/31	Jack Woosley..... C. J. Jones S. R. Loulall	14,964.36	4/16/31	H. M. Hales E. L. Browning J. T. Leachman
Trosper Park	27	8/12/30	28,044.78	1/ 7/31	D. N. Humphrey... C. J. Jones	31,377.18	4/10/31	H. M. Hales J. L. Chenault W. H. Vance
Trosper Park	30	10/13/30	7,419.84	1/ 6/31	D. N. Humphrey... F. H. Briggs E. G. Dahlgren I. E. Atkinson	6,787.20	4/ 2/31	H. M. Hales J. G. Cartland W. H. Janis J. R. Irwin
Trosper Park	31	10/11/30	9,133.32	1/ 6/31	D. N. Humphrey... F. H. Briggs I. E. Atkinson	9,714.72	4/21/31	H. M. Hales R. J. Black J. T. Leachman
Trosper Park	33	12/ 8/30	10,331.46	2/ 8/31	H. M. Hales..... E. G. Dahlgren	7,149.78	6/11/31	H. M. Hales C. M. Keeler
Trosper Park	34	10/26/30	3,961.44	1/ 6/31	Jack Woosley..... C. J. Jones S. R. Loulall	5,137.02	4/23/31	H. M. Hales J. E. Bitler

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Dengail Oil & Gas Co.								
Hile	1	1/14/31	.....	.....	.....	47,454.60	4/ 1/31	H. M. Cabinett A. L. Rush
Schillings	1	9/21/30	3,177.54	3/20/31	H. M. Robinett L. C. Rice			
Woodson	1	2/ 3/31	.....	.....	.....	33,084.06	4/ 9/31	H. M. Robinett C. E. Long J. B. Abbott
Denver Producing Re& fining Co.								
Alexander	1	12/11/30	49,785.72	2/11/31	H. M. Robinett E. G. Dahlgren J. B. Abbott W. C. Reimer	47,354.88	4/ 1/31	H. E. Rapp R. E. Dugger C. R. Welch
Harvey	1	11/10/30	16,029.84	1/ 8/31	Everett Ball Carl Bashara	15,419.52	4/ 4/31	H. E. Rapp J. M. Akins Harry Marshall
Hatfield	1	1/ 7/31	.....	.....	.....	24,119.10	4/ 7/31	H. M. Robinett J. B. Abbott C. E. Long
Whitten	1	8/ 8/30	9,309.12	1/16/31	Fred Homer E. G. Dahlgren	9,894.48	4/ 7/31	Fred Homer E. F. Banks
Donleon Oil Co.								
Hunzicher	1	12/ 7/30	47,064.66	3/11/31	C. L. Marvin L. C. Rice Frank Baker	54,335.70	4/13/31	W. U. Paul D. Y. Wilson Jack Cutcher
Eason Oil Co.								
Lively	1	3/ 2/31	.....	.....	.....	38,532.66	4/24/31	J. McCabe C. M. Keeler J. T. Leachman W. M. Copeland C. E. Long

Empire Oil Co.

Lease	Well No.	Date well came in	January pot.	Date	Witness	Arpil pot.	Date	Witness
Gustin	1	11/16/30	.....	.....	.....	1,738.80	4/ 1/31	G. R. Biddle Dewey Kelley John Smith Melvin Rogers
Gustin	2	1/ 5/31	6,592.02	3/24/31	C. R. Biddle..... L. C. Rice	6,234.72	4/ 6/31	C. R. Biddle G. E. Bitler K. S. McNabb John Smith
Refinery Site	1	2/18/31	.....	.....	.....	19,054.44	4/17/31	B. C. Miller W. M. Copeland C. E. Long R. L. Craven

Wirt-Franklin Pet. Corp.

Lease	Well No.	Date well came in	January pot.	Date	Witness	Arpil pot.	Date	Witness
Burge	1	10/ 2/30	2,364.48	1/ 6/31	F. W. Lawson..... E. G. Dahlgren	3,125.16	5/ 1/31	C. B. Baker W. M. Copeland C. E. Long
Holder	1	8/ 3/30	2,742.78	1/ 7/31	F. W. Lawson..... K. S. McNabb H. H. Farrell	2,803.50	4/ 2/31	C. B. Baker T. J. Leachman C. E. Jones
[fol. 353] Holder	2	9/12/30	4,950.24	1/ 6/31	R. L. Hunter..... J. E. Findley E. Wallace	4,662.00	4/ 3/31	C. R. Baker Robert Black W. R. Mooney
Lowery	2	9/ 2/29	11,842.14	1/ 4/31	R. L. Hunter..... Forrest Wolfe I. S. McGrew	11,130.30	4/ 3/31	R. C. Jarrel J. E. Jones E. W. & F. B. Jones Dewey Kelley
Lowery	3	2/ 7/30	18,248.82	1/ 3/31	R. C. Jarrel..... Forrest M. Hall Earl Steel	17,803.50	4/ 1/31	Oddis Patton R. C. Jarrel

Lowery	4	2/17/30	11,874.72	1/ 5/31	R. L. Hunter Forrest Hall Earl Steel	10,993.44	4/ 5/31	R. C. Jarrel Jess Shipley E. L. Dodson
Lowery	6	3/17/30	9,343.56	1/ 4/31	R. L. Hunter I. S. McGrew Forrest Hall	567.00	4/19/31	R. C. Jarrel K. C. McNabb E. L. Browning
Lowery	7	3/ 6/30	15,206.30	1/ 3/31	R. L. Hunter Forrest Hall J. E. Findley	14,666.28	4/ 2/31	R. C. Jarrel W. H. Vance A. H. Otis
Lowery	8	6/20/30	14,156.22	1/ 4/31	R. L. Hunter Forrest Hall I. S. McGrew	13,964.94	4/ 3/31	R. C. Jarrel J. F. O'Donnell Dewey Kelley
Lowery	9	8/19/30	12,343.92	1/ 4/31	R. L. Hunter Forrest Hall L. S. McGrew	7,755.84	4/ 3/31	Jesse Shipley E. L. Dotson
Lowery	10	9/ 5/30	14,612.28	1/ 5/31	R. L. Hunter Forrest Hall R. E. Steel	10,316.88	4/ 2/31	R. C. Jarrel W. H. Vance Harry C. Stever
Lowery	11	9/17/30	4,223.10	1/ 5/31	R. L. Hunter Forrest Hall R. E. Steel	8,821.44	4/ 1/31	R. C. Jarrel Oddis Patton
M. Page	1	7/30/30	6,239.34	1/18/31	R. C. Jarrel E. G. Dahlgren R. E. Steel	5,270.52	4/ 5/31	R. C. Jarrel K. S. McNabb W. A. Robinson
M. Page	2	7/14/30	5,409.30	1/13/31	R. L. Hunter A. H. Housewright K. S. McNabb	3,487.38	4/ 5/31	R. C. Jarrel K. S. McNabb Sam Houk
M. Page	3	11/16/30	6,567.84	1/18/31	R. C. Jarrel E. G. Dahlgren R. E. Stone	7,254.24	4/ 6/31	J. C. Jarrel W. H. Vance K. S. McNabb
M. Page	4	9/15/30	3,300.06	1/18/31	R. C. Jarrel R. E. Steel E. G. Dahlgren	2,524.80	4/ 4/31	K. S. McNabb G. O. Davenport
M. Page	5	9/30/30	8,588.10	1/16/31	R. C. Jarrel R. E. Dugger J. E. Hoover J. E. Fildby	7,071.42	4/ 7/31	R. C. Jarrel W. H. Vance Melvin Rogers E. Wallace

DEFENDANT'S EXHIBIT X—Continued

Lease	Well No.	Date well came in	January pot.	Date	Witness	April pot.	Date	Witness
Shahan	1	10/24/30	3,042.70	1/ 4/31	F. W. Lawson Paul H. Sullens Harry Khoury	2,609.52	4/ 2/31	R. C. Jarrel E. G. Jones J. T. Leachman
Shahan	2	12/ 1/30	1,542.78	2/14/31	R. C. Jarrel L. C. Rice			
Schillings	1	3/10/31				33,095.40	5/28/31	R. C. Jarrel Paul H. Sullens J. T. Leachman Glen Davenport
[fol. 354]								
Theimer	1	3/13/30	22,544.32	1/ 3/31	R. L. Hunter E. E. Pendleton K. S. McNabb	22,672.68	4/ 1/31	C. R. Baker V. D. Biby E. L. Dotson Jesse Shipley
Theimer	4	6/16/30	10,787.28	1/ 4/31	F. W. Lawson Paul H. Sullens Harry Khony	9,109.32	4/ 4/31	C. R. Baker Robert Black Chas. T. Lewis
Theimer	5	1/ 3/31	3,112.56	3/23/31	C. R. Baker L. C. Rice	3,238.32	4/ 5/31	C. R. Baker W. H. Vance Chas. Lewis E. Wallace
Theimer	7	8/11/30	1,764.12	1/ 6/31	R. L. Hunter J. E. Findley E. Wallace			
Theimer	8	8/ 1/30	23,144.76	1/ 4/31	F. W. Lawson Paul H. Sullens Harry Khony	24,860.10	4/ 2/31	C. R. Baker J. E. Jones Dewey Kelley
Theimer	10	9/ 8/30	2,578.08	1/28/31	C. R. Baker E. G. Dahlgren E. Wallace	2,640.96	4/ 1/31	C. R. Baker V. D. Biby E. L. Dodson
Theimer	11	8/23/30	6,021.30	1/ 6/31	F. W. Lawson E. G. Dahlgren	5,357.64	4/ 2/31	C. R. Baker W. H. Vance J. T. Leachman

Theimer	12	9/18/30	3,930.00	1/ 6/31	F. W. Lawson E. G. Dahlgren	3,596.76	4/ 4/31	C. R. Baker Robert Black Chas. Lewis
Theimer	13	9/ 2/30	4,967.52	1/ 3/31	C. R. Baker E. P. Meadows C. E. Harrison	8,316.00	4/ 5/31	C. R. Baker E. L. Browning E. Wallace C. T. Lewis
Theimer-Butterfield	1	9/25/30	2,569	.....	.....	2,569.08	6/11/31	R. C. Jarrel R. E. Steel
Page-Tucker	1	10/23/30	6,741.72	1/ 4/31	F. W. Lawson Paul H. Sullens Harry Khony	4,319.04	4/ 8/31	R. C. Jarrel A. C. Garrison L. C. Rice
Wright	1	6/24/30	4,326.30	2/22/31	C. R. Baker C. E. Long Melvin Rogers	1,610.88	4/16/31	C. R. Baker W. M. Copeland L. C. Rice J. B. Abbott
Wright	2	9/14/30	1,700.76	2/13/31	R. L. Hunter A. H. Housewright K. S. McNabb	661.26	5/ 4/31	C. R. Baker C. M. Keeler C. E. Long
Wright	3	9/21/30	15,175.08	1/30/31	C. R. Baker E. G. Dahlgren C. E. Long	14,583.00	4/15/31	C. R. Baker C. E. Long W. M. Copeland
					Hall & Briscoe			
Mueller	1	9/24/30	20,865.84	3/ 8/31	J. L. Simpson C. M. Keeler	8,644.32	4/18/31	Fred Waltermire C. M. Keeler Jack Critcher
[fol. 355]					Indian Territory Illuminating Oil Co.			
L. Banta	1	4/16/30	675.96	1/23/31	A. E. Dugger C. M. Keeler	660.24	4/20/31	G. A. McIntyre C. M. Keeler W. M. Copeland
Barker-Drake	1	3/ 2/30	8,239.02	1/ 4/31	Thos. L. Powell O. E. Yeatts T. B. Natpol	6,441.84	4/ 2/31	C. W. Carter Harry Valentine S. P. Spaulding
A. Bodine	3	2/ 5/30	2,45=	.....	.....	2,452.32	5/18/31	R. C. Prosser C. M. Keeler

DEFENDANT'S EXHIBIT X—Continued

Lease	Well No.	Date well came in	January pot.	Date	Witness	April pot.	Date	Witness
A. Bodine	4	2/15/30	.....	.....	.....	2,491.62	5/18/31	W. T. Sone C. E. Robertson
A. Bodine	5	2/ 1/30	660.24	1/11/31	Wylie Pitchford E. G. Dahlgren L. D. Todfin	377.28	4/ 8/31	Roy Thomas Harry Valentine
A. Bodine	6	3/ 1/30	1,477.68	1/13/31	Wylie Pitchford E. G. Dahlgren Chas. Lowery	691.68	4/ 8/31	J. A. McCaa Harry Valentine
A. Bodine	7	3/23/30	471.60	1/11/31	Wylie Pitchford E. G. Dahlgren Chas. Lowery	628.80	4/15/31	J. A. McCall C. M. Keeler
Bodine-Anderson	1	10/19/29	377.28	1/ 7/31	Roy Woodcock J. B. Barnes T. B. Butler	251.52	4/ 8/31	Hugh M. Herbert W. H. Norwood
Bodine-Anderson	3	3/ 3/30	377.28	1/ 8/31	W. H. Norwood T. B. Butler J. B. Barnes	220.08	4/20/31	H. L. Stokes C. M. Keeler
S. Bodine	3	2/26/30	503.04	1/ 7/31	G. W. Alexander T. B. Butler J. B. Barnes L. O. Hardy	377.28	4/15/31	Chas. Lowery R. J. Black
E. Border	1	5/ 4/30	2,170.62	1/ 3/31	L. D. Todd Virgil Harrel	2,170.62	4/ 3/31	Roy Thomas Lester Ferguson Jesse Shipley
Blvd. View	1	8/ 8/30	1,680.48	1/ 4/31	E. E. Pendleton C. M. Keeler Claud Locke T. V. Banker Lee Wall	1,843.86	4/ 8/31	Stone Burris Fred Homer
C. Brokaw	1	2/19/30	.....	.....	.....	2,894.16	5/22/31	C. E. Annear B. C. Stone
C. Brokaw	2	3/ 6/30	3,430.98	1/11/31	Paul S. Creed C. B. Jarrel	3,641.04	5/20/31	T. G. Willgrube B. C. Stone

C. Brokaw	3	5/25/30	10,736.40	1/13/31	J. J. Crowden E. G. Dahlgren E. G. Crabtree	7,095.36	4/16/31	J. J. Cowden B. C. Stone
C. Brokaw	4	7/28/30	11,028.12	1/12/31	J. J. Cowden C. M. Keeler	12,813.66	4/14/31	J. J. Cowden R. J. Black
Butterfield	1	3/12/30	7,795.56	1/ 3/31	John Neal Surtcher C. M. Keeler Fred W. Long			
Button	4	2/ 5/30	1,383.36	1/11/31	Wylie Pitchford C. M. Keeler Chas. Lowery	1,163.28	4/ 8/31	W. H. Norwood W. C. Stevens Virgil Swope
C. Button	2	3/ 1/30	1,572.00	3/ 1/31	H. L. Stokes J. R. Wolfe W. L. Stone	1,304.76	4/15/31	W. H. Norwood L. O. Hardy
C. Button	3	3/26/30	2,326.56	1/ 7/31	L. D. Todd S. D. Hardy Chas. Lowery	1,116.12	4/14/31	W. H. Norwood H. C. Minor
L. Canfield	2	2/25/30	754.56	1/26/31	Chas. Lowery C. M. Keeler L. D. Todd			
[fol. 356]								
Capshaw	1	8/18/30				886.92	5/ 9/31	J. M. Akins G. H. Lee
Carrico	1	7/24/30	13,210.44	1/ 5/31	C. L. McGuffee C. M. Keeler E. E. Pendleton L. A. Woosdon	5,508.24	4/ 5/31	O. H. Wolfe J. H. Bond J. C. Rosenberger
Carrico	2	7/28/30	4,061.15	1/ 4/31	G. E. Sailsbury P. V. Banker E. E. Pendleton Lee Wall	3,337.62	4/ 3/31	Stone Burris J. C. Rosenberger Jach Critcher
Carrico	3	9/22/30	10,736.40	1/ 3/31	Lee Wall C. M. Keeler Roy Rose	9,756.12	4/ 2/31	J. W. Dollar S. A. Revell
Carrico	4	9/16/30	4,808.04	1/11/31	P. V. Banker R. E. Dugger	3,944.46	4/ 4/31	Stone Burris James Chenault I. T. Harrel

DEFENDANT'S EXHIBIT X—Continued

Lease	Well No.	Date well came in	January pot.	Date	Witness	April pot.	Date	Witness
Carrico	5	9/19/30	2,707.44	1/ 6/31	Geo. Jones C. M. Keeler E. E. Pendleton	2,380.68	4/ 4/31	Stone Burris C. M. Keeler J. C. Rosenberger
Coppinger	1	7/30/30	10,082.88	1/ 7/31	W. H. Smith Neal Conley C. B. Wilcoxson F. B. Jobe	8,028.96	4/ 5/31	Lee Pennington Virgil Swope G. E. Butler
Coppinger	2	9/ 2/30	840.24	1/27/31	J. W. Dollar O. E. Yeatts			
Coppinger	3	9/ 5/30	1,960.56	1/10/31	S. B. Barron V. E. Jeter	1,820.52	4/15/31	Lee Pennington W. H. Vance Virgil Swope
Coppinger	4	10/12/30	3,112.56	1/ 5/31	S. B. Brannon F. V. Jobe Lloyd R. Lacey Neal Chancellor			
Coppinger	5	8/24/30	3,364.08	1/11/31	S. Brannon J. E. Jeter Ralph E. Clark	2,923.92	4/20/31	Lee Pennington G. E. Bitler
Coppinger	6	9/ 7/30	3,835.68	1/14/31	O. C. Fum Chas. Silvis R. E. Dugger	2,703.84	6/ 8/31	Ray Clear Neal Conley
Coppinger	7	9/ 2/30	2,295.12	1/27/31	H. A. Bosse E. G. Dahlgren O. E. Yeatts	2,043.60	4/15/31	Lee Pennington P. S. Harlow W. H. Vance
Coppinger	8	10/ 7/30	2,986.80	1/14/31	H. A. Bosse R. E. Dugger Chas. Silvis	2,892.48	4/21/31	O. G. Garrett C. M. Keeler S. J. Ward
Corff Sub. Div	1	7/28/30	5,321.52	1/11/31	H. A. Bosse Chas. Silvis	6,068.40	4/ 7/31	O. H. Wolfe B. W. Draper W. J. Riddle
Corff Sub. Div	2	8/19/30	3,127.56	1/ 6/31	I. H. Terhume F. B. Jobe J. R. Holder	3,080.88	4/14/31	O. H. Wolfe C. M. Keeler S. P. Spaulding

Corff Sub. Div.....	3	10/ 1/30	2,474.04	1/ 7/31	O. C. Fum..... A. H. Housewright F. B. Jobe	3,547.68	4/16/31	O. C. Fum A. R. Wentworth J. T. Leachman
Corff Sub. Div.....	5	9/ 5/30	10,129.56	1/ 3/31	O. C. Fum..... R. E. Dugger D. E. Engle	8,355.72	4/ 5/31	O. C. Fum J. E. Bitlet J. T. Leachman
Drake.....	1	2/ 8/30	3,944.40	1/ 4/31	Thos. L. Powell.... C. M. Keeler O. E. Yeatts	2,940.84	4/ 2/31	Thos. L. Powell Lee Stomm
Drake.....	2	1/24/80	4,738.02	1/ 6/31	Thos. L. Powell.... C. M. Keeler Casey Cole J. W. Thomas	3,267.60	4/ 5/31	Thos. L. Powell T. B. Nostpob
[fol. 357]								
Eacock.....	1	8/28/30	1,727.16	1/ 4/31	Olin Harris..... Casey Cole Roy A. Smith	1,353.72	4/ 5/31	Lee Pennington J. E. Webb A. S. Webb
Eacock.....	2	8/31/30	2,660.76	1/ 5/31	Olan Harris..... E. H. Jones Lee Wall	2,240.64	4/ 5/31	Olan Harris J. R. Holder Floyd Jones
Earps Add.....	1	3/24/31	.....	.....	.....	5,659.20	6/ 4/31	W. L. Stone C. M. Cleim
N. Emerson.....	2	12/28/29	282.96	1/ 9/31	Roy Kruce..... E. G. Dahlgren Chas. Silvis	220.08	4/ 2/31	H. L. Smith J. E. O'Donnell
N. Emerson.....	3	3/28/30	606.84	1/ 9/31	Roy Krice..... E. G. Dahlgren Chas. Silvis	793.56	4/ 8/31	H. L. Smith A. S. Webb Clay Young
N. Emerson.....	4	2/25/30	140.04	1/27/31	Roy Kruce..... C. G. Crabtree	23.44	4/ 1/31	H. L. Smith J. W. Wyre B. C. Thornbrue
N. Emerson.....	5	5/13/30	2,287.32	1/ 6/31	Jack Wolfenbarger.. Neal Conley T. B. Butler	2,427.36	4/ 6/ 31	G. W. Alexander A. L. Peek B. C. Thronbrue
N. Emerson.....	6	5/21/30	1,120.32	1/ 9/31	Roy Kruce..... E. G. Dahlgren Chas. Silvis	2,100.60	4/11/31	A. M. Bramm C. M. Keeler

DEFENDANT'S EXHIBIT X—Continued

Lease	Well No.	Date well came in	January pot.	Date	Witness	April pot.	Date	Witness
N. Emerson	7	5/27/30	1,120.32	1/ 9/31	Roy Kruce Chas. Silvis E. G. Dahlgren	1,307.04	4/ 7/31	H. L. Smith A. R. Wentworth T. B. Butler
N. Emerson	8	5/14/30	746.88	1/ 6/31	Jack Wolfenbarger Neal Connelly T. B. Butler	4,341.24	4/11/31	G. W. Alexander C. M. Keeler
N. Emerson	10	5/14/30	94.32	1/ 8/31	Russell Harris Neal Conley T. B. Butler			
N. Emerson	11	7/23/30	2,578.08	1/ 6/31	Jack Wolfenbarger Neal Conley T. B. Butler	2,861.04	4/ 3/31	G. W. Alexander W. G. Durker E. W. Burrus
E. Farley	1	5/ 2/30	5,134.80	1/ 8/31	L. D. Kodges C. M. Keeler Chas. Lowery	4,481.28	4/ 3/31	Roy Thomas Floyd Jones H. R. Holder
L. Farley	1	1/22/30	990.36	1/ 8/31	W. A. Wallace Roy Thomas O. W. Yorger E. P. McFarland	1,817.84	4/23/31	Roy Thomas C. M. Keeler W. M. Copeland
L. Farley	2	3/ 7/30	.....	.....	.....	503.04	5/ 5/31	Roy Thomas F. B. Jobe
L. Farley	3	4/ 1/30	5,769.24	1/ 9/31	W. A. Wallace Roy Thomas J. S. Brown L. O. Hardy J. A. McCall E. P. McFarland	4,653.12	4/11/31	R. C. Prosser G. E. Bitler J. M. Akins
L. Farley	4	6/19/30	13,927.92	1/ 7/31	J. A. McCall R. C. Prosser Forrest Hall W. L. Taylor W. A. Wallace	15,201.24	4/10/31	Roy Thomas G. E. Bitler J. A. McCaa

Farley-Fuzzell	1	2/ 4/30	12,183.00	1/ 6/31	W. R. Wallace E. A. Davis J. A. McCall Roy Thomas	1,289.04	4/14/31	Roy Thomas E. G. Crabtree
Farley-Fuzzell	2	3/ 7/30	12,984.72	1/ 7/31	J. A. McCall Forrest Hall W. L. Taylor W. A. Wallace Roy Thomas	11,412.72	4/ 8/31	Roy Thomas W. C. Stevens James Chenault
[fol. 358]								
R. Ferguson	1	3/10/31	.....	.....	.....	4,841.76	5/20/31	R. Pope G. McClain
Ferndale Comm	1	4/14/30	19,492.80	1/10/31	W. B. Jones B. E. Jetton	19,178.40	4/ 3/31	J. E. Findley J. R. Holden Francis McCann
Ferndale Comm	2	5/ 8/30	7,325.52	1/ 5/31	Martin Hopper C. M. Keeler	2,766.72	4/ 7/31	J. E. Findley I. T. Honnold Virgil Swope
Ferndale Comm	3	10/29/30	7,545.60	1/12/31	Martin Hopper E. G. Dahlgren L. A. Woodson	6,130.80	4/ 5/31	J. E. Findley Floyd Jones Virgil Swope
Ferndale Comm	4	8/13/30	13,933.08	1/ 9/31	Olan Harris J. R. Holder			
Ferndale Comm	5	9/21/30	2,800.80	1/ 4/31	Olan Harris Casey Cole J. M. Dietrich	1,913.88	4/ 6/31	Lee Pennington Virgil Swope
Foster	1	9/26/29	59.52	2/ 6/31	Edwin Stalup E. G. Dahlgren	37.50	4/11/31	J. M. Akins F. B. Jobe E. C. Rosenberger
A. B. Fox	1	11/21/30	5,502.00	2/17/31	Chas. Cleveland C. M. Keeler O. E. Yeatts	5,140.44	4/ 4/31	Chas. Barlow J. P. Chenault I. T. Hounold
Chas. Funk	1	9/20/30	8,834.64	1/ 9/31	Martin Hopper Lee Wall	8,425.92	4/ 1/31	Lee Pennington Earl Saward Virgil Swope
M. Fuzzell	1	9/ 7/29	738.84	3/12/31	E. P. McFarland E. G. Crabtree			

DEFENDANT'S EXHIBIT X—Continued

Lease	Well No.	Date well came in	January pot.	Date	Witness	April pot.	Date	Witness
M. Fussell	3	6/21/30	2,200.80	1/ 9/31	Roy Thomas W. A. Wallace J. S. Brown L. O. Harding J. A. McCall H. M. Rice	1,446.24	4/ 2/31	Roy Thomas W. M. Copeland
J. H. George	1	7/14/30	748.50	1/10/31	W. R. Mooney J. R. Holden	568.86	4/ 8/31	Arthur Cross B. C. Stone J. C. Rosenberger
Habeggar-Precure	1	7/28/30	6,675.24	1/ 6/31	B. E. Seikel C. M. Keeler E. E. Pendleton	5,041.44	4/ 2/31	D. D. Dawson Lee Stever D. W. Dyker
Habeggar-Precure	2	8/18/30	5,134.80	1/ 5/31	C. L. McGuffer C. M. Keeler E. E. Pendleton L. A. Woodson	4,574.64	4/ 6/31	D. D. Dawson J. H. Bond J. C. Rosenberger
R. Hammer	1	8/15/30	1,351.92	1/ 5/31	O. C. Fum F. B. Jobe H. H. Haper Hula[illegible]ner	1,194.72	4/ 3/31	Ole Fum Neal Conley W. J. Riggle
R. Hammer	2	9/ 7/30	8,237.28	1/ 6/31	O. C. Fum F. B. Jobe J. R. Holder	6,916.80	4/ 8/31	O. H. Wolfe Lee Stevens Neal Conley
M. Haindl	1	8/28/30	3,615.60	1/ 4/31	I. H. Terhume F. B. Jobe R. E. Dugger	3,049.68	4/ 6/31	O. C. Fum J. T. Ash Neal Conely
S. Hiddleston	1	2/22/30	7,781.40	1/ 9/31	Roy Thomas W. A. Wallace J. D. Brown L. O. Hardy R. C. Prosser J. A. McCall	7,026.84	4/ 3/31	Roy Thomas W. J. Barlow A. Cruger

Holmes-Gray	1	7/23/30	2,053.92	1/ 3/31	Lee Wall C. M. Keeler G. E. Salisbury	1,913.88	4/ 7/31	Stone Burris John Smith J. C. Rosenberger
[fol. 359]								
A. Huffman	1	8/ 7/30	3,862.74	1/ 7/31	Chas. Barlow E. G. Dahlgren	3,057.54	4/ 3/31	Chas. Barlow C. M. Keeler Jack Critcher
A. Huffman	2	10/25/30	3,414.28	1/ 6/31	J. M. Nixon C. M. Keeler Carey Cole J. W. Thomason	3,150.90	4/ 5/31	Chas. C. Barlow J. H. Bond J. C. Rosenberger
Ivanhoe Add	1	9/25/30	6,348.48	1/ 8/31	Roy Rose J. M. Carter	5,835.00	4/ 2/31	Geo. Jones Ed Tyree
Jennings	2	12/30/29				361.56	6/ 5/31	Earl Saulsbury B. J. Jobe
Jennings	3	1/ 6/30				4,087.20	5/19/31	T. G. Willgrube C. M. Keeler B. G. Jobe
B. Johnson	1	9/21/29	1,131.84	1/ 4/31	W. Checas J. S. Brown G. W. Alexander	1,068.96	4/ 7/31	W. H. Norwood J. Chenault J. F. Ash
B. Johnson	3	1/18/30	2,137.92	1/ 5/31	Earl Williams J. S. Brown G. W. Alexander	2,012.16	4/ 7/31	W. H. Norwood J. Chenault J. T. Ash
B. Johnson	4	5/13/30	4,423.04	1/ 5/31	G. W. Alexander J. S. Brown	4,778.88	4/ 3/31	W. H. Norwood J. Chenault W. G. Stemen
B. Johnson	5	6/22/30	3,332.64	1/ 5/31	Earl Williams J. S. Brown G. W. Alexander	3,788.52	4/ 3/31	W. H. Norwood J. Chenault W. C. Stenen
B. Johnson	6	7/ 2/30	5,250.48	1/ 4/31	B. Abrams J. S. Brown G. W. Alexander	7,136.88	4/30/31	R. E. Evans W. M. Copeland
B. Johnson	7	8/29/30	628.80	1/ 4/31	M. C. Alexander J. S. Brown G. W. Alexander	817.44	4/ 1/31	W. H. Norwood E. L. Browning

DEFENDANT'S EXHIBIT X—Continued

Lease	Well No.	Date well came in	January pot.	Date	Witness	April pot.	Date	Witness
B. Johnson	8	8/25/30	455.88	2/24/31	W. H. Norwood E. G. Crabtree	534.48	4/11/31	W. H. Norwood C. M. Keeler J. C. Rosenberger
B. Johnson	9	10/ 6/30	2,609.52	1/ 5/31	Earl Williams J. S. Brown G. W. Alexander	2,480.88	4/ 4/31	W. H. Norwood J. G. Cartland Lee Stevem
Jones Comm.	1	3/ 8/30	18,345.24	1/ 7/31	C. N. Fritz Cash Houghton B. F. Collins	19,792.32	4/ 6/31	Lee Pennington C. M. Keeler F. G. Hiegle
Jones Comm.	2	6/ 3/30	14,190.72	1/ 8/31	C. M. Fritz B. F. Collins	13,117.08	4/16/31	Lee Pennington C. M. Keeler Jack Critcher
Jones Comm.	3	5/24/30	9,802.80	1/ 9/31	C. M. Fritz B. F. Collins	9,709.44	4/ 8/31	Lee Pennington A. E. Jones
Jones Comm.	4	9/10/30	6,581.88	1/13/31	C. M. Fritz C. M. Keeler Neal Conley	4,854.72	4/15/31	W. P. Jones A. E. Jones Jack Critcher
H. W. Jones	1	5/ 2/30	19,792.32	1/ 3/31	C. M. Fritz C. M. Keeler H. H. Farrell Neal Conley			
H. W. Jones	2	5/13/30	10,549.68	1/ 4/31	C. M. Fritz Neal Conley H. H. Farrell Roy Tatum	11,670.00	4/ 7/31	Lee Pennington O. E. Brady Virgil Swope
H. W. Jones	3	8/18/30	16,944.84	1/ 6/31	C. M. Fritz V. F. Collins	19,138.80	4/ 6/31	Lee Pennington Virgil Swope
H. W. Jones	4	9/ 6/30	2,100.60	1/ 7/31	C. M. Fritz Neal Conley	2,800.80	4/14/31	O. G. Garrett G. E. Bitler Virgil Swope
[fol. 360]								
L. Jones	1	2/22/30	2,468.04	1/ 4/31	J. S. French T. V. Butler Chas. Silvis	2,703.84	4/ 3/31	G. W. Alexander L. D. Caldwell

L. Jones	2	2/27/30	513.48	1/ 4/31	J. S. French A. H. Housewright T. B. Butler	2,754.12	4/15/31	F. S. French J. S. Whitechurch
L. Jones	3	4/13/30	3,711.06	1/ 4/31	J. S. French A. H. Housewright T. B. Butler	3,571.02	4/ 5/31	H. L. Smith Clifford Rogers I. W. Wyre
L. Jones	4	3/14/30	1,440.40	3/19/31	F. S. French A. H. Housewright	1,517.10	4/ 1/31	H. L. Smith L. D. Caldwell
L. Jones	5	4/25/30	9,476.04	1/ 4/31	J. S. French Chas. Silvis T. B. Butler	8,402.40	4/ 4/31	G. W. Alexander W. Burrell A. L. Peake
L. Jones	6	5/30/30	7,891.44	1/ 3/31	T. B. Butler Chas. Silvis W. C. Dodd	7,168.32	4/ 2/31	G. W. Alexander J. F. O'Donnell L. D. Caldwell
L. Jones	7	5/29/30	1,037.52	1/ 4/31	J. S. French T. B. Butler Chas. Silvis	1,194.72	4/11/31	G. W. Alexander W. M. Copeland
L. Jones	8	5/17/30	350.10	1/ 4/31	J. S. French A. H. Housewright T. B. Butler	420.12	4/11/31	G. W. Alexander W. M. Copeland
L. Jones	9	5/17/30	840.24	1/ 3/31	J. S. French Chas. Silvis W. C. Dodd	1,400.40	4/ 6/31	H. L. Smith Floyd Jones Frank Schankof
L. Jones	10	6/19/30	4,948.08	1/ 3/31	J. S. French Noel Chancellor Chas. Silvis	4,341.24	4/ 5/31	H. L. Smith Clifford Rogers J. W. Wyre
L. Jones	11	7/ 4/30	2,100.60	1/ 3/31	J. S. French Noel Chancellor A. H. Housewright	1,120.32	4/ 7/31	J. S. French A. S. Webb B. C. Thronbrue J. H. Bond
L. Jones	12	9/10/30	5,414.88	1/ 7/31	J. S. French J. S. Whitchurch W. W. Moore	7,095.38	4/ 6/31	H. L. Smith Floyd Jones Frank Schendof
L. Jones	13	7/25/30	30,692.64	1/ 5/31	J. S. French T. B. Butler	28,381.44	4/17/31	G. W. Alexander T. B. Butler E. L. Browning

DEFENDANT'S EXHIBIT X—Continued

Lease	Well No.	Date well came in	January pot.	Date	Witness	April pot.	Date	Witness
L. Jones	14	7/31/30	14,984.28	1/10/31	J. S. French E. G. Dahlgren	16,618.08	4/ 7/31	H. P. Smith A. S. Webb B. C. Thornbrue J. H. Bond
Mae Knox	1	4/19/30	6,360.12	1/ 7/31	Thos. L. Powell C. M. Keeler	15,357.72	4/27/31	Thos. L. Powell C. E. Bitler
Mae Knox	2	4/14/30	8,028.96	1/ 3/31	Thos. L. Powell John Smith	6,628.56	4/ 7/31	Thos. L. Powell C. M. Keeler J. C. Rosenberger
Mae Knox	3	7/16/30	8,028.96	1/ 5/31	Thos. L. Powell C. M. Keeler J. R. Holden B. D. Biby	7,375.44	4/ 4/31	Thos. L. Powell J. C. Cartland Francis McCann
Mae Knox	4	9/ 9/30	10,759.74	1/ 8/31	Paul S. Cree O. E. Yeatts T. B. Northof	9,195.96	4/14/31	Thos. L. Powell R. J. Black B. C. Stone
Lawrence Place	1	10/15/30	37,157.28	1/ 7/31	Geo. Jones E. G. Dahlgren E. E. Pendleton L. A. Wall	43,459.08	4/ 7/31	Geo. Jones C. M. Keeler J. R. Holden E. F. Banks
Lawrence Place	2	10/ 1/30	22,313.04	1/ 4/31	E. B. Epperley E. E. Pendleton Lee Wall	23,013.24	4/13/31	Geo. Jones W. H. Vance Harry Valentine
[fol. 361]								
Lawrence Place	3	11/11/30	35,056.68	1/27/31	Everett B. Everly Earl F. Bay Harry Valentine	42,525.48	4/ 3/31	Geo. Jones E. L. Browning J. G. Cartland
M. Lawton	1	10/ 3/30	3,458.40	1/ 6/31	Martin Hopper J. T. Kelley	2,798.16	4/ 3/31	Olan Harris F. H. McCann B. C. Stone
M. Lawton	2	1/14/31	1,666.32	3/26/31	Sam W. Carey J. R. Holden	1,854.96	4/ 8/31	O. G. Garrett J. G. Cartland I. T. Hounold

Lemmon	1	10/13/30	1,727.16	1/ 4/31	C. F. Terhune F. B. Jove J. H. Hooden Claud Larke	1,330.38	4/ 1/31	C. B. Keating J. G. Cartland D. E. Foster
Lemmon	2	8/ 5/30	5,088.12	1/ 5/31	W. H. Smith F. B. Jobe Harland Troupe	4,271.22	4/ 8/31	C. B. Keating J. T. Ash B. C. Stone
Lemmon	3	12/ 2/30	2,147.28	3/12/31	H. A. Bosse B. C. Stone	1,283.70	4/17/31	C. B. Keating C. M. Keeler Stafford Rogers Virgil Swope
Lemmon	4	12/18/30	1,727.16	3/11/31	H. A. Bosse B. C. Stone	956.94	4/11/31	C. B. Keating Stafford Rogers B. C. Stone
Lemmon	5	1/21/31	.....	.....	.....	1,913.88	6/ 5/31	Chas. Davis Neal Conley Harry Valentine
Lindsey	2	7/ 4/30	5,563.88	1/10/31	Roy Rose R. E. Dugger	4,936.08	4/ 3/31	P. B. Banker C. M. Keeler D. F. Hudspeth Fred Homer
Magnolia Hgts	1	9/ 8/30	3,874.44	1/ 7/31	P. D. Banker C. M. Keeler Lee Wall	3,244.26	4/ 6/31	Stone Burris C. M. Keeler F. H. McCann
Mid-Texas	1	8/24/30	6,539.52	1/ 6/31	J. B. Barnes W. A. Wallace Roy Thomas	5,391.96	4/ 5/31	Roy Thomas Lee Stevens Lowell Oaks
M. K. & T.	1	8/ 1/30	6,441.84	1/ 5/31	Guy Goodnob Lee Wall E. H. Jorlls	5,414.88	4/11/31	Lee Pennington Lee Wall
M. K. & T. 2	2	10/27/30	2,193.96	1/13/31	W. P. Jones Neal Conley	10,549.68	4/16/31	Lee Pennington C. M. Keeler Virgil Swope
M. K. & T.	3	10/17/30	18,858.72	1/ 3/31	J. M. Dietrich C. M. Keeler E. H. Jones Roy A. Smith	13,350.48	4/13/31	Lee Pennington Virgil Swope

DEFENDANT'S EXHIBIT X—Continued

Lease	Well No.	Date well came in	January pot.	Date	Witness	April pot.	Date	Witness
M. K. & T.	5	11/ 7/30	24,973.80	1/ 9/31	Guy Goodnob J. E. Starkes J. C. Hoover	26,047.44	4/ 8/31	Lee Pennington D. G. Wilson Jack Critcher
Mt. Vernon Hgts.	1	9/ 2/30	2,100.60	1/ 5/31	Roy Rose C. M. Keeler E. E. Pendleton L. A. Woodson			
Okla. City	1	12/ 4/28	.....	.....	.....	503.04	5/24/31	W. H. Norwood C. M. Keeler
Okla. State	1	6/24/30	5,784.96	1/ 6/31	Roy Kruce R. L. Irby	4,951.80	4/ 7/31	H. L. Smith J. F. O'Donnell W. L. Burrell
Okla. State	2	6/24/30	12,858.96	1/ 8/31	Roy Kruce E. G. Dahlgren Lee Wall	10,280.88	4,10/31	G. W. Alexander A. Couger Morgan Jesse L. White
[fol. 362]								
Okla. State	3	7/ 5/30	21,379.20	1/ 5/31	Russell Harris W. W. Moore	20,514.60	4/ 1/31	H. L. Smith J. L. Chenault W. M. Burrell
Okla. State	4	7/18/30	19,398.48	1/ 8/31	Roy Kruce E. G. Dahlgren Lee Wall	18,848.28	4/ 1/31	H. L. Smith W. Burrell J. L. Chenault
Okla. State	5	8/11/30	9,369.12	1/ 8/31	Roy Kruce E. G. Dahlgren Lee Wall	14,965.44	5/ 1/31	G. W. Alexander W. M. Copeland
Okla. State	6	10/11/30	2,845.32	2/11/31	Roy Kruce E. G. Dahlgren E. G. Crabtree B. A. Harroun	2,640.96	4/ 5/31	H. L. Smith J. F. Odonell W. M. Burrell
Okla. State	7	10/ 5/30	8,017.20	1/ 8/31	E. G. Dahlgren Lee Wall	7,136.88	4/ 5/31	H. L. Smith J. F. O'donnell W. M. Burrell

Okla. State	8	10/ 8/30	18,612.48	1/10/31	Roy Kruce J. L. Keys	17,747.88	4/ 2/31	H. L. Smith W. Burrell A. E. Jones
Pasadena Hgts	1	3/11/30	9,265.98	1/ 5/31	C. W. Carter B. D. Biby J. R. Holden	8,215.68	4/ 5/31	C. W. Carter Lee Stevens T. B. Northup
Pasadena Hgts	2	8/14/30	4,247.88	1/ 7/31	J. M. Nixon E. G. Dahlgren	3,734.40	4/ 6/31	C. W. Carter J. G. Cartland F. H. McCann
Pasadena Hgts	3	1/24/31	1,773.84	3/30/31	Chas. Barlow C. M. Keeler	1,773.84	4/17/31	Chas C. Barlow W. H. Vance J. T. Leachman
Pasadena Hgts	4	10/21/30	9,370.98	1/ 9/31	C. W. Carter J. L. Chenault	14,844.24	4/ 3/31	C. W. Carter C. E. Jones H. Valentine
Pasadena Hgts	5	11/ 7/30	[illegible]	[illegible]	[illegible]	840.24	4/27/31	M. M. Phillips G. E. Bitler J. T. Leachman
S. Peterson	1	12/19/29	3,395.52	1/ 7/31	G. W. Alexander J. L. Keys F. H. Briggs	3,301.20	4/ 5/31	W. H. Norwood Jess L. White A. S. Webb
S. Peterson	2	7/ 5/30	9,337.68	1/ 7/31	G. W. Alexander J. L. Keys. F. H. Briggs	11,066.88	4/ 2/31	W. H. Norwood Jess L. White
S. Peterson	3	6/30/30	23,831.40	1/ 5/31	G. W. Alexander J. S. Brown	20,593.20	4/ 6/31	W. H. Norwood J. E. Jones T. B. Butler
S. Peterson	4	7/15/30	4,527.36	1/ 5/31	G. W. Alexander J. S. Brown	3,741.26	4/ 4/31	W. H. Norwood W. G. Stevens
S. Peterson	5	7/28/30	2,861.04	1/ 5/31	Earl Williams J. S. Brown G. W. Alexander	2,672.40	4/ 5/31	W. H. Norwood J. L. White A. S. Webb
S. Peterson	6	8/11/30	13,173.36	1/ 3/31	B. E. Sutton J. L. Chenault G. W. Alexander Loyal Oaks	20,341.68	4/ 2/31	W. H. Norwood Jess White

DEFENDANT'S EXHIBIT X—Continued

Lease	Well No.	Date well came in	January pot.	Date	Witness	April pot.	Date	Witness
S. Peterson	7	8/28/30	8,803.20	1/ 8/31	A. F. Williams J. L. Keys R. L. Irby	7,482.72	4/ 4/31	W. H. Norwood Jesse L. White W. C. Stevens
S. Peterson	8	8/27/30	4,087.20	1/ 7/31	G. W. Alexander J. L. Keys H. F. Briggs	3,159.72	4/ 6/31	W. H. Norwood J. E. Jones T. B. Butler
Phelans Add	1	9/13/30	793.56	1/14/31	Roy Rose Carl Bashara J. M. Carter	840.24	4/11/31	T. E. Dugger Fred Homer
[fol. 363]								
Phelans Add	2	10/26/30	1,820.52	1/15/31	Roy Rose J. M. Carter Carl Bashara	1,610.46	4/15/31	Lee Jones Fred Homer
W. J. Phillips	1	7/26/30	17,904.12	1/ 5/31	W. P. Jones Lee Wall	18,203.76	4/10/31	O. G. Garrett Neal Conley
A. Precure	1	5/30/30	10,082.88	1/ 3/31	W. H. Smith Early Wallace C. M. Keeler F. B. Jobe W. H. Smith	6,675.24	4/18/31	W. H. Smith W. H. Vance B. C. Stone
E. Precure	1	9/ 6/30	5,942.16	1/ 3/31	I. H. Terhune C. M. Keeler F. B. Jobe.	5,313.36	4/ 6/31	W. H. Smith J. C. Rosenberger B. W. Dykes
E. Precure	2	9/ 1/30	5,847.84	1/ 4/31	I. H. Terhune W. H. Smith F. B. Jobe R. Holden Claud Locke	7,671.36	4/ 8/31	W. H. Smith J. T. Ash J. T. Leachman
Rensimer	1	7/12/30	3,267.60	1/ 5/31	T. B. Banker C. M. Keeler E. E. Pendleton L. A. Woodson	2,520.72	4/11/31	Stone Burros Jesse Shipley

M. Reynolds	1	8/15/30	513.48	1/ 7/31	J. S. French C. W. Dearware	630.18	4/ 8/31	G. W. Alexander C. M. Keeler
Salsman	1	5/22/30	793.56	1/ 6/31	Russell Harris J. L. Keys Chas. Silvis	1,120.32	4/14/31	J. S. French J. G. Tate J. T. Leachman
Salsman	3	5/23/30	402.60	1/ 7/31	Roy Kruce Chas. Silvis C. Barron	163.38	4/21/31	J. W. Alexander J. E. Bitler K. G. Tate
Salsman	4	6/12/30	956.94	1/ 6/31	Russell Harris J. L. Keys Chas. Silvis	2,053.92	4/11/31	J. W. Alexander W. M. Coplin
Salsman	5	8/31/30	186.72	1/28/31	Roy Kruce K. G. Tate	46.68	6/ 5/31	G. W. Alexander J. T. Leachman
Spannagel	1	10/ 7/30	20,399.16	1/12/31	E. B. Everley C. M. Keeler	20,142.42	4/ 1/31	Geo. Jones W. F. Helm Paul J. Shelton
E. M. Spillman	1	6/23/30	6,231.78	1/ 4/31	C. W. Carter O. E. Yeatts C. M. Kedy B. D. Biby	5,694.96	4/ 8/31	J. M. Nixon J. L. Chenault Jesse Shipley
E. M. Spillman	2	10/22/30	7,515.48	1/ 6/31	C. W. Carter C. M. Keeler J. W. Thomason Casey Cole	6,721.92	4/ 6/31	Thos. L. Powell F. H. McCann J. C. Cartland
E. M. Spillman	4	8/30/30	2,520.72	1/10/31	C. W. Carter J. S. Brown	5,788.32	4/ 4/31	C. W. Carter C. M. Keeler
Starkey	1	8/22/30	7,954.32	1/ 5/31	J. W. Dollar F. B. Jobe Harlan Troupe	7,772.58	4/ 2/31	W. H. Smith J. C. Cartland J. C. Rosenberger
Starkey	2	9/21/30	5,344.80	1/ 6/31	S. B. Branon F. B. Jobe J. R. Holden	5,376.24	4/ 5/31	C. B. Keating L. O. Bradford Harry Valentine
M. Sudik	1	3/26/30	16,944.84	1/ 3/31	Jack Wolfenbarger Nubert McDowell W. E. Dodd	13,210.44	4/17/31	G. W. Alexander E. L. Browning J. F. Armstrong
M. Sudik	2	4/12/30	19,932.36	1/15/31	J. A. Parks B. A. Harroun	16,863.12	4/ 1/31	H. L. Smith E. W. Burns W. S. Durkee

DEFENDANT'S EXHIBIT X—Continued

[fol. 364]

Lease	Well No.	Date well came in	January pot.	Date	Witness	April pot.	Date	Witness
M. Sudik	3	7/13/30	10,956.36	1/ 3/31	Jack Wolfenbarger.. Nubert McDowell W. C. Dodd	10,853.10	4/ 4/31	G. W. Alexander. W. S. Durkee E. W. Burns
M. Sudik	4	6/27/30	13,537.20	1/10/31	J. S. French..... E. G. Dahlgren Chas. Silvis	14,564.16	4/ 7/31	J. S. French Jess L. White J. H. Bond
M. Sudik	5	7/ 8/30	233.40	1/ 6/31	J. S. French..... W. W. Moore	163.38	4/14/31	Tracy Hembree A. S. Webb Arthur Christofferson
M. Sudik	6	10/13/30	18,321.90	1/ 6/31	J. S. French..... W. W. Moore	17,084.88	4/ 1/31	H. L. Smith W. S. Durkee E. W. Burns
M. Sudik	7	7/ 5/30	6,768.60	1/ 4/31	Jack Wolfenbarger.. B. C. Thornbrue W. E. Dodd	6,068.40	4/ 4/31	G. W. Alexander W. S. Durkee E. W. Burns
M. Sudik	8	7/13/30	15,964.56	1/ 4/31	Jack Wolfenbargar.. B. C. Thronbrue W. C. Dodd	14,214.06	4/ 2/31	G. W. Alexander W. S. Durkee E. W. Burns
M. Sudik	9	7/17/30	15,917.88	1/ 7/31	J. S. French..... W. W. Moore	20,259.12	4/ 6/31	G. W. Alexander A. Christofferson E. W. Burns
M. Sudik	10	8/ 8/30	14,844.24	1/ 4/31	Jack Wolfenbarger.. B. C. Thornbrue W. C. Dodd	14,074.02	4/ 2/31	G. W. Alexander W. S. Durkee
Terrace Lawn	1	2/18/31	.....	.....	.....	41,451.84	5/ 2/31	Fred Ingram C. M. Keeler
E. Theimer	1	3/ 5/30	14,890.93	1/ 3/31	J. W. Arnold..... J. M. Dietrich C. M. Keeler Roy A. Smith	13,817.28	4/ 1/31	Lee Pennington E. F. Banks Early Wallace
E. Theimer	2	3/22/30	233.40	1/11/31	J. E. Findley..... C. M. Keeler	373.44	4/15/31	O. G. Garrett Virgil Swope B. C. Stone
E. Theimer	3	6/ 1/30	12,556.92	1/ 6/31	J. W. Arnold..... J. T. Kelley	12,043.44	4/ 4/31	J. W. Arnold Virgil Swope

E. Theimer	5	6/ 8/30	1,073.64	1/ 7/31	J. W. Arnold J. R. Holder	2,100.60	4/11/31	Lee Pennington W. H. Vance Virgil Swope
E. Theimer	6	8/30/30	1,400.40	1/ 8/31	J. W. Arnold J. R. Holder	1,260.36	4/ 2/31	W. B. Timmison Virgil Swope
E. Theimer	7	9/21/30	4,387.92	1/ 8/31	J. W. Arnold Neal Conley J. R. Holder	5,648.28	4/11/31	Lee Pennington W. H. Vance Virgil Swope
E. Theimer	8	11/ 2/30	1,213.68	1/ 6/31	J. W. Arnold Lloyd R. Lacy	1,447.08	4/ 8/31	O. G. Garrett F. G. Hiegle J. B. Abbott
C. Trosper	1	5/16/30	4,994.76	1/ 3/31	V. E. Seikel C. M. Keeler F. B. Jobe	10,376.04	4/ 8/31	D. D. Dawson F. H. McCann V. D. Palmer
C. Trosper	2	7/ 4/30	11,203.20	1/ 4/31	V. E. Seikel C. M. Keeler E. E. Pendleton Lee Wall	11,203.20	4/11/31	D. D. Dawson W. J. Riggle
C. Trosper	3	9/ 6/30	10,409.64	1/12/31	Geo. Jones C. M. Keeler	14,984.28	4/15/31	D. D. Dawson W. M. Coplin Jack Critcher
C. Trosper	4	8/23/30	9,649.42	1/19/31	Geo. Jones J. L. Chenault C. B. Jarrel	5,928.36	4/18/31	D. D. Dawson Stafford Rogers B. C. Stone
[fol. 365]								
C. E. Trosper	1	5/12/30	9,149.28	1/ 3/31	S. B. Branon C. M. Keeler F. B. Jobe	8,495.76	4/ 5/31	J. W. Dollar W. F. Riggle H. Valentine
E. Trosper	1	6/20/30	9,476.04	1/ 7/31	Earl Saulsbury C. M. Keeler E. E. Pendleton Lee Wall	9,195.96	4/ 3/31	Earl Saulsbury E. G. Jones J. E. Jones H. Valentine
E. Trosper	2	7/14/30	7,375.44	1/11/31	Earl Saulsbury R. E. Dugger	9,592.94	4/10/31	L. L. Marlow J. P. Chenault B. C. Stone

DEFENDANT'S EXHIBIT X—Continued

Lease	Well No.	Date well came in	January pot.	Date	Witness	April pot.	Date	Witness
H. Trosper	1	6/13/30	14,284.08	1/ 3/31	F. B. Jobe C. M. Keeler Earl Saulsbury	8,309.04	4/ 8/31	L. L. Marlow W. M. Coplin
H. Trosper	2	8/ 2/30	7,087.20	3/19/31	Geo. Graham C. C. Spiers	10,563.84	4/ 7/31	J. McKinney J. G. Cartland W. M. Coplin
H. Trosper	3	8/ 1/30	6,581.88	1/19/31	Earl Saulsbury R. E. Dugger J. S. Brown	5,741.64	4/11/31	A. Cross C. M. Keeler W. J. Riggle
H. Trosper	4	9/11/30	7,885.92	1/12/31	Earl Saulsbury C. M. Keeler	9,592.74	4/ 5/31	L. L. Marlow J. Chenault F. McCann
H. Trosper	5	10/ 8/30	2,287.32	1/ 6/31	Earl Saulsbury C. M. Keeler E. E. Pendleton	4,341.24	4/17/31	L. L. Marlow W. H. Vance B. C. Stone
H. Trosper	6	11/16/30	4,464.48	1/11/31	E. C. Conway R. E. Dugger	2,986.80	4/ 8/31	Joe McKinney J. G. Cartland W. M. Coplin
H. Trosper	7	1/31/31	1,902.42	3/19/31	Geo. W. Brown H. Valentine	1,414.80	5/13/31	D. C. Cooper B. C. Stone
L. Trosper	1	2/17/30	6,602.40	1/ 7/31	John Neal E. G. Dahlgren	4,370.16	4/ 6/31	Lee Pennington I. T. Hounnold B. C. Stone
L. Trosper	2	6/30/30	786.00	1/ 8/31	W. C. Jones C. M. Keeler			
P. Trosper	1	3/ 1/30	1,021.80	2/ 6/31	C. A. Wiles I. E. Atkinson L. E. George	565.92	4/14/31	Arthur Cravb S. P. Spaulding B. C. Stone
Trosper-Hughes	1	6/ 6/30	5,648.28	1/ 6/31	W. H. Smith F. B. Jobe J. R. Holden	7,235.40	4/17/31	W. H. Smith C. M. Keeler Stafford Rogers J. T. Leachman B. C. Stone

Trosper	2	11/24/29	11,413.26	1/ 4/31	O. H. Murphy C. M. Keeler T. B. Nathol	12,230.16	4/ 2/31	J. M. Nixon W. C. Stever T. B. Nathol
Trosper	3	12/ 9/29	797.04	1/ 8/31	J. M. Nixon C. M. Keeler B. D. Biby O. E. Yeatts	1,163.28	4/18/31	G. A. McIntyre Stafford Rogers J. T. Leachman
Trosper	4	5/24/29	6,728.16	1/ 5/31	C. L. Jady J. R. Holden B. D. Biby	7,463.44	4/ 8/31	G. A. McIntyre J. L. Chenault F. H. McCann
Trosper	6	2/ 7/30	1,194.72	1/13/31	E. L. Jady E. G. Dahlgren W. A. Griffin	943.20	4/15/31	O. Humphry G. E. Bitler J. T. Leachman F. B. Jobe
Trosper	7	1/ 9/31	471.60	1/ 9/31	J. M. Nixon J. S. Brown O. E. Yeatts	1,326.16	4/ 1/31	E. L. Jady W. E. Caudill Early Wallace A. R. Wentworth
[fol, 366]								
Trosper	8	1/31/30	4,411.26	1/ 5/31	O. H. Murphy C. M. Keeler J. R. Holden B. D. Biby	5,333.16	4/ 1/31	O. Humphrey A. R. Wentworth W. E. Caudill Early Wallace
Trosper	9	2/ 5/30	4,096.17	1/ 6/31	O. H. Murphy A. M. Murphy C. M. Keeler Casey Cole	3,267.60	4/ 6/31	O. Humphrey W. B. Stone I. T. Hounold
Trosper	10	2/ 3/30	6,162.24	1/ 3/31	C. L. Jady J. Smith Glen Walton	7,632.18	4/14/31	O. Humphry C. M. Keeler F. B. Jboe W. M. Coplin
Trosper	11	5/27/30	5,414.88	1/ 7/31	O. H. Murphy C. M. Keeler	4,653.12	4/11/31	D. Humphry Jess Sipley B. C. Stone
Unsel-Krager	1	3/ 4/30	9,662.76	1/ 3/31	Roy Thomas W. A. Wallace A. F. Sweeney	9,242.64	4/ 1/31	Roy Thomas A. H. Otis J. C. Shaffer

DEFENDANT'S EXHIBIT X—Continued

Lease	Well No.	Date well came in	January pot.	Date	Witness	April pot.	Date	Witness
Unsel-Krager	2	3/20/30	8,962.56	1/ 5/31	W. A. Wallace Roy Thomas J. L. Chenault J. A. McCall	8,052.30	4/ 4/31	J. M. Akins C. M. Keeler L. O. Bradford T. E. Rogers
Unsel-Krager	3	4/ 5/30	6,263.82	1/ 3/31	Roy Thomas W. A. Wallace A. F. Sweeney	6,185.10	4/ 5/31	Roy Thomas J. C. Cartland C. H. Foster T. E. Rogers
Mary Unsell	1	4/ 9/30	5,963.40	1/ 3/31	Roy Thomas W. A. Wallace A. S. Sweeney	5,741.64	4/ 4/31	J. M. Akins J. Chenault L. O. Bradford J. C. Bateman
Mary Unsll	2	5/31/30	3,932.76	1/ 3/31	W. A. Wallace Roy Thomas A. F. Sweeney	3,594.36	4/ 5/31	Roy Thomas J. G. Cartland
Mary Unsell	3	8/22/30	2,870.82	1/ 6/31	J. A. McCall J. A. Barnes Roy Thomas W. A. Wallace	1,307.04	4/ 6/31	Roy Thomas Jess L. White
Mary Unsell	4	9/ 2/30	15,544.44	1/ 6/31	J. A. McCall Claud Larks Roy Thomas F. W. Hectman			
Mary Unsell	5	9/16/30	1,657.14	1/ 6/31	J. A. McCall Claud Larke Roy Thomas F. W. Hectman	1,283.70	4/ 8/31	Roy Thomas C. H. Foster Jess L. White
Mary Unsell	6	8/31/30	4,119.48	1/ 5/31	Roy Thomas W. A. Wallace J. Chenault J. A. McCall R. C. Prosser	2,917.50	4/ 2/31	Roy Thomas J. L. Chenault J. A. McCaa

Viewpoint	1	9/22/30	27,961.32	1/ 9/31	W. H. Smith J. Chenault R. E. Dugger	25,814.04	4/ 1/31	W. O. Hiffin B. B. Palmer
Viewpoint	2	2/16/31	.....	.....	.....	39,864.72	4/27/31	Roy Rose W. M. Coplin
Viewpoint	3	11/16/30	61,664.28	1/16/31	W. H. Smith C. M. Keeler Chas. Silvis	68,386.20	4/ 4/31	H. H. Bosse Fred Homer J. E. Hall
Viewpoint	4	2/12/31	.....	.....	.....	50,321.04	4/22/31	J. W. Smith C. M. Keeler R. J. Black
Weber-Wall	1	11/24/30	3,552.72	2/18/31	W. B. Roberson C. M. Keeler W. E. Pickle O. E. Yeatts	3,332.64	4/ 7/31	J. M. Dixon C. M. Keeler W. Coflin J. R. Holdin
[fol. 367]								
Werner-Farley	1	4/17/30	5,368.10	1/10/31	L. D. Todd C. M. Keeler Chas. Lowery	4,831.38	4/ 6/31	Roy Thomas J. Chenault A. E. Jones
Werner-Farley	2	4/14/30	.....	.....	.....	2,450.70	4/24/31	Roy Thomas H. M. Rice G. E. Bitler
Werner-Farley	3	4/28/30	3,501.00	1/10/31	L. D. Todt C. M. Keeler Chas. Lowery	3,314.28	4/ 6/31	Roy Thomas J. Chanault J. E. Jones
Werner-Speegle	1	12/15/29	2,012.16	1/ 3/31	L. G. Toby Virgil Harold	2,067.18	4/ 7/31	Roy Thomas H. Valentine
Werner-Speegle	2	5/21/30	1,351.92	1/ 4/31	L. D. Toby B. D. Ramage	1,179.00	4/14/31	Roy Thomas J. R. Holden Floyd Jones
Werner-Speegle	3	4/29/30	2,200.80	1/ 3/31	L. D. Toby Virgil Harold	2,342.28	4/ 7/31	Roy Thomas H. Valentine
Mary Warden	1	4/ 7/30	6,721.92	1/ 8/31	Wylie Pitchford C. M. Keeler Chas. Lowery Noel Chancellor	6,418.50	4/ 2/31	Roy Thomas J. Chenault F. McCann J. A. McCaa

DEFENDANT'S EXHIBIT X—Continued

Lease	Well No.	Date well came in	January pot.	Date	Witness	April pot.	Date	Witness
Watters	2	12/ 2/30	1,949.28	1/ 5/31	Earl Williams J. S. Brown G. W. Alexander	2,122.20	4/ 8/31	W. H. Norwood J. E. Jones Virgil Swope
Watters	4	8/ 4/30	4,716.00	1/ 8/31	G. W. Alexander J. B. Barnes.	5,627.76	4/ 2/31	W. H. Norwood A. E. Jones H. Valentine
Watters	5	7/30/30	2,389.44	1/ 4/31	J. S. Brown Ed. Kloptenstein L. O. Hardy G. W. Alexander	2,389.44	4/ 7/31	W. H. Norwood J. Stevens B. C. Stone
Watters	6	8/ 5/30	4,810.32	1/ 5/31	Earl Williams J. S. Brown G. W. Alexander	5,156.16	4/ 5/31	W. H. Norwood Jack Woolsey I. T. Hounold
J. Wheeland	1	9/29/30	12,167.28	1/ 4/31	S. B. Branon L. B. Holland R. E. Dugger J. R. Holden	16,568.88	4/ 4/31	C. D. Scott W. J. Riggle J. T. Leachman
Wheeler	2	1/ 3/30	2,923.92	1/12/31	Odessie Estes E. G. Dahlgren	3,018.24	4/18/31	O. Humphrey W. M. Coplin Virgil Swope
Wheeler	3	2/27/30	2,233.24	3/ 4/31	Arthur Julian B. C. Stone	3,018.24	4/16/31	Arthur Cross C. M. Keeler B. C. Stone
Wilkie-Anderson	1	3/25/30	377.28	1/ 5/31	Earl Williams J. S. Brown	251.52	4/14/31	W. H. Norwood W. M. Coplin
Wilkie-Anderson	3	8/20/30	1,383.36	1/ 5/31	G. W. Alexander J. S. Brown	1,854.96	4/15/31	W. H. Norwood A. R. Wentworth F. J. Jobe
E. Williams	1	8/27/30	6,288.00	1/ 9/31	J. M. Akins J. L. Chenault J. A. McCall	5,407.68	4/ 6/31	Roy Thomas J. L. White
W. Canfield	1	12/18/30	2,515.20	1/ 5/31	L. D. Toby J. S. Brown	3,332.64	4/ 7/31	Roy Thomas Lee Sevens B. C. Stone

W. Canfield	2	4/15/30	3,819.96	1/ 5/31	L. D. Toby J. S. Brown	4,385.88	4/14/31	Roy Thomas Floyd Jones J. R. Holder
[fol. 368]				Johnson, Dabney & Patton				
Foote	1	2/20/30				18,769.68	5/ 1/31	A. O. Lewis C. E. Long W. H. Marshall
				Jones Bros.				
Patterson	1	12/27/30				31,086.00	4/11/31	C. O. Perkins C. E. Long
Sullivan	1	8/10/30	18,238.20	1/10/31	H. B. Jones A. H. Housewright J. E. Findley	18,144.00	4/ 1/31	H. B. Jones R. H. Baird Neil Conley
				J. E. Mabee				
Mills	1	4/16/31				50,313.90	6/ 1/31	D. B. Edwards L. G. Maxwell P. H. Sullins
Reynolds	1	2/ 6/31				43,148.94	4/ 8/31	Edwards Mabee C. M. Keeler C. E. Long S. S. Hahn
Schillings	1	9/25/30	14,584.50	2/ 7/31	E. F. Stevens C. B. Wilcoxen Lon Rice	13,370.40	4/18/31	I. B. Woodson W. H. Vance C. E. Long
R. Smith	1	9/16/30	59,904.00	1/ 5/31	E. J. Gracey C. M. Keeler H. H. Haper Ted Greene	60,468.00	4/ 2/31	Jack Critcher G. W. Wilken J. D. Abbot

DEFENDANT'S EXHIBIT X—Continued

R. A. McArthur

Lease	Well No.	Date well came in	January pot.	Date	Witnesses	April pot.	Date	Witnesses
Armour	1	1/ 6/31	55,967.92	3/13/31	C. G. Kibben J. R. Clark C. J. Fisher	55,249.68	4/ 5/31	W. C. Noll Jack Kutcher
					Mid-Kansas Oil & Gas Co.			
Browning	2	8/15/30	471.00	1/ 7/31	T. E. Kison H. L. Bufkin	550.08	4/ 9/31	E. G. Crabtree C. E. Long A. D. Kison
Fortson	1	7/22/29	457.50	1/ 7/31	Mearl Mays H. L. Bufkin	2,034.54	4/ 1/31	Mearl Mays E. G. Crabtree
Fortson	4	11/17/29	274.50	1/ 9/31	Mearl Mays C. G. Crabtree			
Mollman	1	11/26/29	2,488.50	1/ 5/31	Virgil Harrold T. R. Elliott	2,172.71	4/ 1/31	Virgil Harrold F. J. O'Connell
Mollman	2	4/ 1/30	8,473.50	1/ 6/31	Virgil Harrold J. R. Elliott	9,226.16	4/ 2/31	Virgil Harrold F. J. Hirgle
Mollman	3	4/30/30	5,370.00	1/ 4/31	Virgil Harrold J. R. Elliott	4,874.58	4/16/31	Virgil Harrold Stafford Rogers
Mollman	4	9/13/30	6,138.00	1/ 5/31	Virgil Harrold J. R. Elliott	5,071.92	4/ 2/31	Virgil Harrold J. J. Heigle
Trosper Brown	1	7/ 1/30	864.00	1/10/31	J. E. Adkinson F. H. Briggs	630.00	4/ 2/31	J. E. Adkinson E. G. Crabtree J. L. Baker
					Minnehoma Oil Co.			
Pugh	1	9/17/30	65,271.12	1/11/31	J. M. Sterritt J. M. Carter K. S. McNabb J. W. Thomson Lloyd R. Looey	61,474.56	4/ 1/31	J. M. Sterritt R. E. Dugger Roy Covington

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Oils Incorporated

Hathaway	1	3/30/30	.....	.....	.....	50,187.66	4/ 8/31	J. R. Weil A. R. Wentworth J. M. Sterritt
Mooreland	1	10/13/30	5,985.00	2/ 5/31	J. R. Weil E. G. Dahlgren			
Ross	1	10/ 4/30	56,643.24	1/ 6/31	Burk Mullins R. L. Oslerhour	55,329.42	4/ 4/31	J. R. Weil W. C. Tyner Melvin Rogers
Thompson	1	3/ 9/31	.....	.....	.....	56,601.90	4/14/31	J. Critcher J. R. Weil E. L. Browning
Ashcan	1	1/26/31	63,314.94	3/28/31	L. B. Holland Neal Conley L. C. Rice	63,782.22	4/ 2/31	L. C. Rice J. Critcher L. B. Holland R. E. Dugger D. Y. Wilson Neal Conley Jewel Ross Chas. T. Lewis

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Phillips Petroleum Co.

Ball	1	12/16/30	14,284.68	2/25/31	L. B. Holland C. E. Long	12,988.80	4/ 1/31	R. E. Clark J. E. Jones
Black	1	1/28/31	53,951.04	3/26/31	Earl Griffin Paul Sullins	53,074.68	4/ 1/31	A. C. O'Brien Earl Griffin N. W. Long
Blazer	1	2/18/31	.....	.....	.....	49,601.88	4/ 6/31x	B. W. Dykes B. M. Spatt W. E. Stevens
Boulting House	1	3/ 9/31	.....	.....	.....	49,887.36	5/ 1/31	Ed. Jones L. B. Holland U. W. Long
Burt	1	1/14/31	20,624.64	3/28/31	C. B. Wilcoxin C. E. Long J. R. Holden	20,756.00	4/ 3/31	J. T. Leachman K. K. Kennedy S. P. Spalding L. C. Rice

DEFENDANT'S EXHIBIT X—Continued

Lease	Well No.	Date well came in	January pot.	Date	Witness	April pot.	Date	Witness
Carey	1	9/19/30	2,542.32	1/19/31	Everett H. Ball E. G. Dahlgren L. D. Chatlan	1,947.00	4/ 6/31	E. C. Ball E. L. Browning J. S. Wood
Ciger	1	10/21/30	56,220.36	1/11/31	J. P. Stevens R. E. Duger A. J. Hannah L. A. Woodson	60,611.16	4/ 6/31	L. B. Holland W. M. Coplin J. T. Leachman R. Schoonover
Clayton	1	1/ 2/31	32,351.76	3/11/31	C. B. Wilcoxin Lon C. Rice Troy Ware	30,900.72	4/ 4/31	K. K. Kennedy S. P. Spalding C. E. Long Ed. Jones
Crean	1	3/13/31	.....	.....	.....	25,475.04	5/18/31	Earl Griffin J. T. Leachman C. E. Long
Danewood	1	3/11/31	.....	.....	.....	58,570.98	5/18/31	R. M. Harp J. T. Leachman C. E. Long
Davis	1	3/ 3/31	.....	.....	.....	58,461.42	4/28/31	L. B. Holland C. E. Long Mr. Edwards A. H. Wilkinson T. T. Rogers
Day	1	10/14/30	61,599.36	1/28/31	L. B. Holland E. G. Dahlgren L. C. Rice	59,949.36	4/ 1/31	L. B. Holland R. E. Duggan E. L. Welch
Hankins	1	12/ 4/30	3,968.10	2/20/31	Earl Griffin C. E. Long O. E. Yeatts	4,616,16	4/ 6/31	E. Giff C. R. Wentworth Harry Valentine
Harrell	1	9/ 7/30	3,138.48	1/11/31	Earl Griffin A. J. Hannah L. A. Woodson	1,946.28	4/ 7/31	E. Giff C. E. Long Jack Cutcher J. T. Thompson

Hatcher	1	8/12/30				3,744.96	5/13/31	Earl Griffin Neal Connely C. E. Long W. Y. Carthers
Hercheck	1	8/12/30				48,988.86	4/ 7/31	B. M. Spratt L. O. Bradford Ed. Jones
Higgins	1	1/16/31	47,250.00	3/16/31	V. M. Spratt Joe Hamilton Carl Franks Paul Sullins	46,424.10	4/ 2/31	V. M. Scott C. H. Foster J. S. Wood
[fol. 371]								
Highland	1	1/ 8/31	32,917.68	3/25/31	V. M. Spratt L. C. Rice	33,030.72	4/ 3/31	D. Edwards L. C. Rice Ed. Jones
Johnson	1	3/31/31				24,672.48	6/11/31	J. P. Stevens J. T. Leachman
Jones	1	8/ 3/30	3,043.92	1/ 7/31	Everett Ball R. E. Duger H. C. Boltz	3,077.64	4/ 2/31	E. C. Ball Dewey Kelley Paul Phetton
King	1	11/22/30	50,775.78	1/30/31	L. B. Holland L. C. Rice O. E. Yeatts	46,801.44	4/ 2/31	K. K. Kennedy R. E. Mangum C. E. Randolph
Kleinegger	1	2/27/31				43,582.56	5/ 2/31	L. B. Holland C. E. Long A. O. Lewis
Lybrand	1	9/23/30	56,949.12	1/16/31	E. Griffin A. J. Hannah F. S. Fox	52,392.84	4/ 2/31	A. N. Wilkinson R. E. Clark O. E. Brady L. A. Fisher J. M. Phillips
Mc Ausland	1	1/12/31	53,100.06	2/24/31	V. M. Spratt J. R. Holder	52,423.80	4/ 1/31	E. E. Mc Intyre V. M. Spratt Paul H. Sullins J. R. Holder J. R. Irwin

DEFENDANT'S EXHIBIT X—Continued

Lease	Well No.	Date well came in	January pot.	Date	Witnesses	April pot.	Date	Witnesses
Mosey	1	3/19/31	.....	.....	.....	31,409.64	4/13/31	Raymond M. Hayes R. C. Miller J. T. Leachman L. C. Rice
Nunn	1	2/18/31	.....	.....	.....	70,234.26	4/14/31	E. Griffin L. C. Rice W. W. Long
Othenin	1	4/ 2/31	.....	.....	.....	60,276.48	6/12/31	L. B. Holland C. M. Keller J. L. Cline
Rallen	1	10/17/30	23,517.60	1/17/31	Earl Griffin..... E. G. Dahlgren Paul Sullins	23,905.74	4/ 3/31	Earl Griffin C. E. Long J. H. Bond W. S. Tyre
Robb	1	3/18/31	.....	.....	.....	11,371.98	5/23/31	V. M. Spratt J. T. Leachman D. Edwards Paul Sullins
Roden	1	10/17/30	61,772.88	1/ 7/31	J. T. Stevens..... R. E. Duger H. C. Bolts	58,151.58	4/ 3/31	L. B. Holland R. E. Duger W. S. Tyer W. W. Bodine
Roose	1	12/ 8/30	8,982.00	2/24/31	Everett H. Ball.... Karl Bashara	8,652.60	4/ 4/31	E. C. Ball E. F. Bank J. R. Holden
Schillings	1	3/24/31	.....	.....	.....	35,231.88	6/ 4/31	V. M. Spratt Paul Sullins
Temple	1	3/25/31	.....	.....	.....	45,215.22	6/ 4/31	Earl Griffin R. E. Steel N. W. Long
Unruh	1	12/21/30	54,248.22	1/22/31	L. B. Holland..... E. G. Dahlgren K. S. Mc Nabb	57,557.88	4/ 4/31	E. Giff C. R. Welch J. H. Bond

Velt	1	10/ 4/30	11,880.06	1/ 8/31	Everett Ball Karl Bashara	11,272.80	4/ 6/31	C. E. Ball E. L. Browning S. W. Lord
[fol. 372].								
Walnut Grove	1	2/ 3/31	61,913.28	3/11/31	L. B. Holland Charles Silvin L. C. Rice	63,813.12	4/ 4/31	L. B. Holland R. E. Duger J. B. Baker
Winsted	1	3/15/31	.....	.....	.....	19,014.78	3/ 7/31	V. M. Spratt C. E. Long J. T. Leachman Lee Wall
				Plains Petroleum Co.				
Sadler	1	9/13/30	.....	.....	.....	5,292.00	4/13/31	J. R. Irvin J. B. Abbot J. H. Burgett J. T. Thompson
				Prairie Oil & Gas Co.				
Hiddleston	1	7/21/29	270.00	1/ 6/31	Chas. Cross B. A. Horn	972.24	5/14/31	Geo. Lewis C. E. Long B. H. Horn
Hiddleston	3	11/ 1/29	4,860.00	3/ 4/31	Chas. Cross B. F. Horn	6,510.36	4/ 1/31	Sam La Baron W. M. Coplin Harry Valentine
Hiddleston	4	12/31/29	390.00	2/ 3/31	Chas. Cross B. F. Horn	595.68	4/ 2/31	Sam La Baron O. B. Good A. Cangin
Hiddleston	5	1/ 7/30	1,110.00	1/ 7/31	Sam La Baron B. A. Horn	1,750.92	4/ 4/31	G. H. Lee E. L. Annon A. Canagor
Hiddleston	6	2/20/30	4,830.00	1/ 6/31	Sam La Baron B. F. Horn	5,164.92	4/ 1/31	C. V. Vanlandingham Chas. Cross O. V. Good

DEFENDANT'S EXHIBIT X—Continued

Lease	Well No.	Date well came in	January pot.	Date	Witnesses	April pot.	Date	Witnesses
Hiddleton	7	2/20/30	2,310.00	1/ 7/31	Chas. Cross B. F. Horn	3,127.26	4/ 2/31	Sam La Baron O. B. Good
Hiddleston	9	6/19/30	960.00	1/ 5/31	Chas. Cross B. F. Horn	1,375.02	4/ 4/31	E. L. Annon A. Congor C. V. Vanlandingham H. M. Hubert
Sigmon	1	5/16/30	6,330.00	1/ 4/31	Chas. Cross J. L. Chenault	3,823.68	4/18/31	Sam La Baron G. E. Bittler Roy Little J. F. Armstrong
Sigmon	2	9/ 4/30	4,260.00	1/15/31	Chas. Cross Clay Young	4,292.88	4/ 2/31	Sam La Baron A. R. Wentworth Arthur Christofferson
Sigmon	3	9/25/30	2,250.00	1/ 5/31	Chas. Cross Ed Bills	3,262.44	4/ 3/31	Chas. Cross C. R. Wentwroth Austin Allan J. H. Parks A. Christofferson
Sigmon	4	8/ 4/30	6,060.00	1/ 4/31	Chas. Cross J. L. Chenault	6,231.18	4/ 1/31	Chas. Cross S. Rogers A. Christofferson
Sigmon	5	8/23/30	3,090.00	1/ 7/31	Chas. Cross Ed Bills	2,442.24	4/ 3/31	Chas. Cross C. R. Wentworth Austin Allen J. H. Parks A. Christofferson
Sigmon	6	9/ 4/30	10,230.00	1/ 6/31	Chas. Cross Ed Bills	9,714.96	4/ 4/31	Chas. Cross A. R. Wentworth R. Harris
Sigmon	7	8/21/30	2,940.00	1/ 6/31	Chas. Cross Edd Bills	2,319.36	4/ 2/31	Chas. Cross A. Christofferson A. R. Wentworth

Reynolds & Unruh								
Evans	1	6/21/30	24,004.92	1/ 7/31	G. J. Greene B. F. Collins A. E. Jones	24,831.06	4/ 5/31	E. J. Greene A. E. Jones
[fol. 373] **Russell Petroleum Co.**								
Roosevelt	1	11/23/30	11,753.88	2/28/31	C. E. Long	14,663.28	4/10/31	R. L. Martin C. M. Keeler Lee Wall J. H. Bond A. C. Garrison
J. C. Shaffer, Incorporated								
Arnold-Baker	1	6/20/30	11,101.50	1/ 5/31	Ralf Calahan A. H. Housewrite	12,614.16	4/ 3/31	C. B. Bolt Neal Conely
Childs	1	9/13/29	6,145.44	1/ 7/31	Ralph Calahan R. L. Oslerhout R. L. Alexander	4,447.68	4/ 8/31	B. D. Bilby W. H. Vance J. M. Akins
Cook-Cunningham	1	3/27/30	9,634.50	1/ 5/31	Ralph Calahan A. H. Housewrite	13,164.42	4/ 2/31	B. D. Biby W. S. Tyre E. G. Dobson V. E. Getton
Cook-Cunningham	2	6/10/30	11,964.54	1/ 7/31	Ralph Calahan K. E. Stell J. M. Carter	11,437.38	4/ 2/31	V. D. Biby W. S. Tyer E. L. Datser Mohin Rogers V. E. Jetton
Giles	1	4/21/31	.....	.....	.....	41,540.88	6/17/31	J. R. Calahan C. M. Keeler J. C. Rosenberger
Shell Petroleum Corp.								
Egermeir	1	8/ 6/30	3,709.92	1/ 2/31	George Kingland E. G. Dahlgren	3,945.72	4/ 1/31	George Kingland W. C. Stevens J. M. Akins

DEFENDANT'S EXHIBIT X—Continued

Lease	Well No.	Date well came in	January pot.	Date	Witnesses	April pot.	Date	Witnesses
Petty	1	8/31/29	2,043.60	1/28/31	Peter Horn C. E. Long	1,383.36	4/ 2/31	George Kingland Jess Shipley C. V. Vandandingham T. D. Butler J. R. Wolf
Petty	2	3/ 9/30	78.60	1/10/31	Peter Horn T. B. Butler W. J. Barlow	102.18	4/28/31	George Kingelin G. E. Bitler C. E. Long J. R. Wolfe
Petty	3	4/17/30	2,295.12	1/28/31	Peter Horn C. E. Long	2,326.56	4/28/31	George Kingelin G. E. Bitler C. E. Long J. R. Wolfe
Petty	4	12/ 8/29	1,289.04	2/17/31	Peter Horn E. G. Dahlgren	.....	.....	.....
Petty	5	12/ 2/29	172.92	1/26/31	George Kingelin E. G. Dahlgren	101.04	4/ 1/31	George Kingelin L. O. Bradford G. R. Wolfe V. V. Valandingham
Petty	6	1/ 2/30	1,133.28	3/ 5/31	George Kingelin	1,351.92	4/ 1/31	George Kingelin L. O. Bradford. J. R. Wolfe C. V. Vanlandingham
Petty	7	1/23/30	786.00	1/ 2/31	George Kingelin E. G. Dahlgren	943.20	4/ 2/31	Peter Horn R. C. Thornnur C. V. Vandaningham J. R. Wolfe
					Sinclair Oil & Gas Co.			
Donnell	1	8/ 9/30	7,218.00	1/ 8/31	Orin Goodwin E. G. Crabtree	5,985.66	4/ 7/31	S. G. Oakes W. C. Stevens

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Kinter		7	5/17/30				78.60	4/10/31	Jesse Shaffer H. M. Herbert
School Land	54	2	3/26/30	3,974.64	1/ 3/31	S. G. Oakes U. G. Wand	3,254.16	4/ 2/31	S. G. Osser F. V. Jobe
"	"	3	3/21/30	3,407.28	1/ 5/31	S. G. Oakes C. C. Harrison	2,909.92	4/ 1/31	S. G. Oakes J. V. Jobe
"	"	4	6/ 4/30	9,726.36	1/ 6/31	S. G. Oakes Clifford Wiles	6,416.40	4/ 3/31	Key F. Haas F. V. Jobe
"	"	6	7/12/30	7,421.50	1/ 7/31	S. G. Oakes J. C. Hurt, Jr.	7,800.24	4/ 4/31	S. G. Oakes F. V. Jobe
"	"	7	6/15/30	3,606.94	1/ 5/31	O. Goodwin John McFadden	2,284.08	4/ 6/31	S. G. Oakes F. D. Jobe
"	"	8	6/ 9/30	1,691.52	1/ 5/31	S. G. Oakes Jack Wolfenberger	1,407.60	4/ 7/31	S. G. Oakes J. V. Jobe
"	"	9	6/15/30	6,075.60	1/ 3/31	S. G. Oakes O. P. Mc Intyre	4,836.00	4/ 5/31	S. G. Oakes F. V. Jobe
"	"	10	6/23/30	21,880.98	1/ 3/31	S. G. Oakes Clifford Wiles	16,656.00	4 /2/31	S. G. Oakes F. V. Jobe
"	"	11	6/18/30	9,481.32	1/ 8/31	S. G. Oakes J. C. Hurt, Jr.	5,132.54	4/ 5/31	S. G. Oakes F. V. Jobe
"	"	12	6/ 9/30	20,932.32	1/ 6/31	Orvey Goodwin Clifford Wiles	17,063.52	4/ 1/31	S. G. Oakes F. V. Jobe
"	"	13	6/19/30	10,298.28	1/ 3/31	S. G. Oakes A. Alexander	8,058.24	4/ 4/31	T. J. Hoas F. V. Jobe
"	"	14	6/25/30	14,127.00	1/ 5/31	Orvey Goodwin Roy Krouse	11,548.56	4/ 4/31	S. G. Oakes F. V. Jobe
"	"	15	7/ 2/30	9,311.04	1/ 7/31	J. F. Hoas Clifford Wiles	9,294.72	4/ 5/31	S. G. Oakes J. D. Swank
"	"	16	7/ 4/30	10,238.16	1/ 6/31	S. G. Oakes A. E. Kole	9,548.40	4, 3,31	J. F. Hoas F. V. Jobe
"	" 67	1	3/31/30	9,443.58	1/ 6/31	S. G. Oakes J. C. Hurt	12,536.40	4/22/31	S. G. Oakes W. H. Vance
"	"	2	6/11/30	1,000.56	1/ 8/31	S. K. Oakes Roy Wildey	1,969.92	4/ 8/31	S. G. Oakes F. V. Jobe
"	"	3	6/12/30	7,658.88	1/ 7/31	S. G. Oakes J. C. Hurt, Jr.	8,396.16	4/ 7/31	J. F. Hoas F. V. Jobe

DEFENDANT'S EXHIBIT X—Continued

Lease	Well No.	Date well came in	January pot.	Date	Witnesses	April pot.	Date	Witnesses
School Land	5	8/19/30	24,628.68	1/ 8/31	S. G. Oakes Clifford Wiles	20,689.92	4/ 6/31	S. G. Oakes F. V. Jobe
" " 69	1	7/16/30	21,107.94	1/ 7/31	S. G. Oakes Clifford Wiles	17,164.32	4/ 7/31	J. F. Hoas F. V. Jobe
" "	2	10/21/30	21,761.94	1/ 9/31	Orvey Goodwin J. C. Hurt, Jr.	19,730.64	4/ 6/31	S. G. Oakes J. V. Jobe
" "	3	6/12/30	15,362.28	1/ 9/31	Orvey Goodwin J. C. Hurt, Jr.	13,942.56	4/ 8/31	S. G. Oakes F. V. Jobe
Stamper	2	11/10/29				78.60	4/10/31	S. G. Oakes Stafford Rogers
Vencl	1	3/12/30	2,406.72	1/ 3/31	A. E. Nicholson E. G. Crabtree	7,041.54	4/ 2/31	S. G. Oakes A. R. Anderson
"	2	3/10/30	1,068.20	1/ 4/31	A. E. Nicholson E. G. Crabtree	1,157.52	4/ 3/31	Jessie Schaffer A. R. Anderson
[fol. 375]								
Vencl	3	4/17/30	2,280.48	1/ 4/31	Jesse Shafer E. G. Crabtree	1,954.32	4/ 1/31	S. G. Oakes O. L. Hayes
Vencl	5	6/12/30	8,413.44	1/ 3/31	J. F. Armstrong E. G. Crabtree	7,438.38	4/ 4/31	S. G. Oakes W. M. Coplin
Vencl	6	7/26/30	29,861.70	1/ 6/31	S. G. Oakes R. L. Alexander	9,003.72	4/ 4/31	S. G. Oakes O. L. Hayes
Vencl	8	6/12/30	5,315.04	1/ 5/31	S. G. Oakes Chas. Silvis	5,091.60	4/ 5/31	S. G. Oakes W. M. Coplin
Vencl	9	7/ 6/30	16,498.80	1/ 3/31	Jesse Shafer E. G. Crabtree	24,508.32	4/ 4/31	S. G. Oakes F. H. McCann
Vencl	10	8/11/30	1,423.68	2/ 3/31	W. J. Smart C. E. Long			
Vencl	11	6/30/30	13,969.92	1/ 3/31	S. G. Oakes A. J. Hannah	13,830.36	4/ 2/31	S. G. Oakes I. T. Hounold
Vencl	12	6/19/30	16,964.16	1/ 4/31	A. E. Nicholson E. G. Crabtree	15,867.54	4/ 2/31	S. G. Oakes W. J. Barlow

Vencl	13	9/10/30	27,267.36	1/ 6/31	Jesse Shafer R. L. Alexander	28,990.80	4/ 5/31	Jesse Shafer W. M. Coplin
Vencl	14	7/ 9/31	6,889.68	1/ 6/31	S. G. Oakes R. L. Alexander	9,956.16	4/ 6/31	S. G. Oakes S. Rogers
Vencl	15	8/11/30	28,645.68	1/ 4/31	J. F. Armstrong E. G. Crabtree	28,240.32	4/ 3/31	Jesse Shaffer A. R. Anderson
Vencl	16	7/ 9/30	25,959.84	1/ 5/31	J. F. Armstrong Chas. Silvis	31,024.68	4/ 1/31	S. G. Oakes I. T. Hounold
[fol. 376]					Skelly Oil Co.			
Ainsworth	1	8/23/30	3,980.52	1/16/31	E. A. Jenkins Henry McNarara	4,235.76	4/17/31	H. H. Haper S. S. Hahn C. E. Long W. J. Riggle
Aisnworth	2	8/27/30	3,443.04	1/15/31	A. H. Housewright Paul Sullens	2,823.12	4/ 1/31	V. E. Jeton I. S. McGrew W. J. Riggle S. S. Hahn
Ainsworth	4	8/23/30	5,322.96	1/15/31	A. H. Housewright Paul Sullesn	4,807.08	4/ 1/31	V. E. Jeton I. S. McGrew S. S. Hahn
Dillon	1	10/ 2/30	4,514.04	1/10/31	D. F. Collins J. M. Carter Lee Wall	3,355.80	4/ 4/31	H. H. Haper C. E. Long J. H. Bond
Dillon	2	8/18/30	7,132.32	1/10/31	H. H. Haper Paul H. Sullens	5,945.52	4/ 3/31	E. A. Jenkins R. E. Dugger C. E. Long
Dunn	1	4/23/30	17,133.30	1/ 3/31	E. A. Jenkins J. M. Carter	16,951.42	4/ 2/31	R. Beard R. Calhoun J. Smith Ed. R. Welch
G. Field	1	10/28/30	28,263.60	1/ 8/31	P. S. Harlow J. E. Findley Lloyd Lacey	26,295.96	4/ 7/31	P. S. Harlow Thos. Sulton H. F. Ham L. O. Bradford Harper Turner

DEFENDANT'S EXHIBIT X—Continued

Lease	Well No.	Date well came in	January pot.	Date	Witness	April pot.	Date	Witness
Harper-Turner	1	11/28/30	61,558.44	2/ 3/31	H. H. Haper L. C. Rice E. G. Dahlgren	64,804.08	4/ 9/31	E. A. Jenkins C. M. Keeler J. E. Jones Jack Critcher
Hoops	3	3/31/30	2,500.92	1/ 5/51	K. G. Tate B. C. Thornbrue C. Barron	5,910.00	4/ 1/31	K. G. Tate A. R. Anderson J. H. Parks
Hoops	4	4/28/30	10,167.60	1/ 3/31	K. G. Tate Jack Brown C. Barron	4,788.36	4/ 3/31	K. G. Tate Louis Koscielbuy B. S. Bikes
Hoops	5	4/27/30	560.88	1/ 3/31	K. G. Tate B. C. Thornbrue C. Barron	443.88	4/ 2/31	K. G. Tate H. J. Parkt Frank Schandof
Hoops	7	5/26/30	3,458.88	1/ 6/31	H. H. Haper B. C. Thornbrue C. Barron	3,972.24	4/ 2/31	K. G. Tate J. H. Parkt Frank Schandof
Hoops	8	5/24/30	10,069.32	1/ 4/31	K. G. Tate J. H. Parks C. Barron W. W. Moore	5,732.46	4/ 4/31	K. G. Tate A. R. Anderson B. C. Thornbrue
J. Hurt	1	9/25/30	70,674.54	1/13/31	E. A. Jenkins R. E. Seal J. M. Carter	68,817.96	4/ 8/31	E. A. Jenkins J. E. Bitler Jack Crutcher
Tanner	1	8/26/30	4,306.32	1/13/31	P. S. Harlow R. E. Dugger Paul H. Sullens	3,538.32	4/ 6/31	P. S. Harlow G. R. Floyd I. S. McGrew
Tanner	2	9/ 4/30	42,903.36	1/15/31	E. A. Jenkins Paul H. Sullen	37,417.44	4/17/31	H. H. Haper S. S. Hahn J. B. Abbott C. E. Long

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Slidk-UrscheT Inc.

Alexander	1	8/12/30	11,454.72	1/11/31	Chas. H. Mee Neal Conley Ralph E. Clark O. E. Yeatts	9,576.00	4/11/31	Chas. N. Mee Neal Conley A. R. Wentworth C. E. Long
Alexander	2	8/29/30	1,771.92	1/12/31	Chas. H. Mee Neal Conley R. E. Steel	1,260.00	4/ 6/31	Albert Davis C. E. Long W. S. Wood
Atkinson	1	8/20/30	10,666.80	1/ 9/31	Chas. H. Mee Carl Bashara K. S. McNabb	10,253.76	4/ 4/31	L. E. Reames Monroe Duncan W. E. Collier
Atkinson	2	8/26/30	14,794.08	1/ 6/31	Chas. H. Mee F. L. Bensfield	13,372.80	4/ 3/31	Chas. H. Mee D. F. Hudspeth Earl Silord
Bailey	1	4/22/30	10,007.40	1/ 7/31	Early Wallace K. E. Steel J. W. Thomason	9,912.00	4/ 4/31	John Smith J. E. Bitler S. Ward Paul Phelton Dewey Kelley
Baker	1	8/ 2/30	.....	.....	.....	1,657.44	4/ 8/31	Albert Davis F. J. Hiegle Lon C. Rice
Baker	2	8/ 4/30	6,230.88	1/ 9/31	Chas. H. Mee A. H. Housewright E. B. Meadows	6,203.04	4/ 6/31	Albert Davis G. E. Bitler R. E. Adams Lon C. Rice
Baker	3	8/27/30	2,723.88	1/ 8/31	Chas. H. Mee A. R. Holloway Casey Cole	2,640.96	4/ 7/31	Albert Davis F. H. Hiegle C. W. Ball R. E. Adams
Baker	4	7/21/30	13,295.52	1/ 7/31	Chas. H. Mee C. C. Cole	12,024.60	4/ 3/31	Chas. H. Mee I. N. Merrell G. E. Bitler
Baker	5	9/29/30	9,613.08	1/ 8/31	Chas. H. Mee Carl Bashara	8,503.44	4/ 6/31	Albert Davis Lee Stevens L. C. Rice R. E. Adams

DEFENDANT'S EXHIBIT X—Continued

Lease	Well No.	Date well came in	January pot.	Date	Witness	April pot.	Date	Witness
Cawins	1	3/13/31	.....	.....	.....	29,981.52	5/21/31	Chas. H. Mee K. S. McNabb R. E. Brien
Campbell	1	8/22/30	37,488.06	1/ 8/31	Chas. H. Mee E. B. Meadows J. E. Hoover	33,774.48	4/ 4/31	Chas. H. Mee S. E. Hankins Joy Sneed
Campbell	2	12/ 3/30	40,728.84	1/29/31	Chas. H. Mee E. G. Dahlgren L. C. Rice	38,310.96	4/ 2/31	Chas. H. Mee S. E. Hawkins A. H. Otis Joy Sneed
Campbell	3	12/ 7/30	54,513.54	1/ 3/31	Chas. H. Mee E. L. Marvin	53,901.24	4/ 1/31	W. B. Long Neal Conley
S. Carter	1	6/14/30	12,921.36	1/ 6/31	Chas. H. Mee B. F. Collins E. T. Meadows A. R. Holloway	12,461.76	4/ 5/31	H. H. Ferrall C. G. Jones K. S. McNabb
Classon	1	6/28/30	5,303.26	1/ 7/31	Chas. H. Mee Ralph E. Clark	4,414.56	4/ 4/31	Chas. H. Mee Jewell Ross Melvin Rogers
Classen	2	8/30/30	21,488.76	1/ 5/31	Chas. H. Mee E. T. Meadows J. E. Starks	20,594.94	4/ 2/31	Chas. H. Mee K. S. McNabb Earl Saward
Classen	3	9/24/30	50,005.56	1/ 3/31	Chas. H. Mee Carl Bashara	52,214.88	4/ 1/31	Chas. H. Mee Jewell Ross L. C. Rice
[fol. 378]								
Classen	4	1/ 7/31	53.295.84	1/23/31	Chas. H. Mee K. S. McNabb J. B. Abbott	46,279.68	4/ 3/31	Chas. H. Mee W. H. Davis Jewell Ross
Classen-Edwards	1	9/25/31	48,616.08	1/14/31	Chas. H. Mee R. E. Steel J. B. Abbott	46,720.56	4/ 1/31	C. L. Ray J. B. Abbott G. E. Bitler

Clegg	1	10/22/30	11,784.72	1/27/31	Taylor Mayfield E. G. Dahlgren Paul H. Sullens J. B. Abbott	8,809.80	4/ 2/31	Chas. H. Mee G. E. Bitler J. W. Thomason
Clegg	2	12/ 6/30	12,218.04	1/30/31	Chas. H. Mee C. E. Long O. E. Yeatts	4,873.92	4/ 4/31	Chas. H. Mee C. J. Jones E. R. Welch J. W. Thomason
Crawford	1	7/22/30	12,014.04	1/ 8/31	Chas. H. Mee J. S. Brown A. H. Housewright	10,665.66	4/ 3/31	Chas. H. Mee A. H. Otis C. E. Long
Danreuther	1	10/ 8/30	1,779.24	1/12/31	Taylor Mayfield A. H. Housewright Carl Bashara K. S. McNabb	1,513.44	4/ 7/31	Albert Davis G. E. Bitler Neal Conley
Danreuther	2	8/22/30	4,057.20	1/12/31	Taylor Mayfield Neal Conley R. L. Oslerhout Carl Bashara	12,986.16	4/ 4/31	Cha. Mee W. H. Vance R. Brand
Danreuther	3	9/ 9/30	5,041.44	1/ 8/31	J. R. Fletcher J. S. Brown A. H. Housewright	3,938.16	4/ 4/31	Chas. H. Mee W. H. Vance J. R. Haeden
Daugherty	1	8/19/30	9,709.92	1/ 9/31	Chas. H. Mee A. H. Housewright	32,375.76	4/17/31	Chas. H. Mee R. J. Balck
Dean	1	9/29/30	43,655.34	1/ 5/31	Chas. H. Mee Earl Louett	40,291.98	4/ 2/31	C. L. Ray Robert Black H. B. Allensworth
Dennis	1	6/17/30	5,475.66	1/ 4/31	Chas. H. Mee R. L. Irby	4,386.84	5/25/31	C. L. Ray B. C. Stone
Dinnivan	1	6/10/30	7,994.40	1/ 9/31	Chas. H. Mee A. H. Housewright	8,021.76	4/ 4/31	Chas. H. Mee A. E. Jones W. R. Mooney
Foote	1	6/25/30	13,512.90	1/11/31	Chas. H. Mee R. W. Buzza O. E. Yeatts	13,298.70	4/20/31	Chas. H. Mee W. H. Vance J. S. Ward C. E. Long

DEFENDANT'S EXHIBIT X—Continued

Lease	Well No.	Date well came in	January pot.	Date	Witness	April pot.	Date	Witness
Foote	2	8/31/30	1,931.16	3/ 3/31	Chas. H. Mee J. R. Holder C. E. Long	1,603.20	4/ 3/31	Chas. H. Mee K. S. McNabb Virgil Swope
Foote	3	10/ 7/30	3,788.76	2/ 9/31	Chas. H. Mee E. G. Dahlgren O. E. Yeatts C. E. Long	3,772.20	4/ 3/31	Chas. H. Mee G. E. Bitler Virgil Swope
Foote-Bricoe	1	1/16/31	503.10	1/16/31	Chas. H. Mee J. L. Chenault R. W. Buzza	409.50	4/ 6/31	Albert Davis C. H. Foster E. L. Dotson
Frisco	1	12/ 3/30	38,643.96	2/20/31	Chas. H. Mee L. C. Rice J. B. Abbott	36,187.32	4/ 2/31	Chas. H. Mee J. E. Bitler W. A. Wilson J. W. Thomason
Frisco	2	1/27/31	.....	.....	.....	23,987.28	4/ 6/31	Albert Davis A. C. Carrison J. W. Thomason
[fol. 379]								
C. G. Frost	1	9/ 2/30	3,282.24	1/12/31	C. L. Ray A. H. Housewright	3,529.80	4/ 2/31	C. L. Ray John Trace
Frost Hgts.	1	8/14/30	2,299.50	1/ 6/31	Chas. H. Mee Paul H. Sullens	4,443.96	4/ 3/31	C. L. Ray E. F. Banks L. B. McFadden P. H. Sullivan
Frost Hgts.	2	8/21/30	3,213.72	1/ 7/31	Chas. H. Mee Paul H. Sullens A. H. Housewright	3,943.14	4/ 3/31	C. L. Ray E. F. Banks Paul H. Sullens W. E. Helme
Frost Hgts.	3	9/ 5/30	.....	.....	.....	1,073.58	4/ 6/31	C. L. Ray Paul H. Sullens W. J. Riggle

Frost Hgts	4	8/24/30	5,138.04	1/ 7/31	Chas. H. Mee A. H. Housewright Paul H. Sullens	5,074.92	4/ 3/31	C. L. Ray E. F. Banks Paul H. Sullens W. F. Helue
Gleason	1	9/13/30	6,415.68	1/12/31	Chas. Houghton R. E. Steel	6,581.76	4/ 5/31	C. Houghton J. E. Jones R. E. Adams
Harrison	1	9/16/30	3,080.46	1/22/31	C. L. Ray Fred Engram R. E. Clark	1,574.88	5/11/31	Chas. H. Mee C. M. Keeler Lee Wall C. E. Long
Hoops	2	3/20/30	1,257.60	1/ 4/31	Chas. H. Mee J. W. Whitchurch	1,146.12	4/ 7/31	Albert Davis E. L. Browning J. S. Whitchurch Scott Robinson
Hoops	3	4/14/30	3,043.68	1/ 6/31	A. R. Anderson J. S. Whitchurch	2,990.40	4/ 3/31	C. Barron N. J. Simon
Hoops	4	4/ 9/30	10,057.92	1/ 5/31	A. R. Anderson J. S. Whitchurch	2,515.20	4/ 1/31	C. Barron L. W. Willis L. D. Caudwell
Hoops	5	5/16/30	6,660.96	1/ 7/31	A. R. Anderson J. S. Whitchurch	6,429.48	4/ 7/31	Albert Davis E. L. Browning Frank Schandoff
Hoops	6	5/ 7/30	3,111.12	1/ 6/31	A. R. Anderson J. S. Whitchurch	1,696.32	4/ 7/31	Albert Davis E. L. Browning L. W. Willis
Hoops	7	4/27/30	8,767.44	1/ 5/31	A. R. Anderson J. S. Whitchurch	3,258.36	4/ 3/31	C. Barron W. J. Simon
Houghton	1	4/22/30	10,763.76	1/ 9/31	Chas. H. Mee E. T. Meadows B. F. Collins	10,572.30	4/ 4/31	Early Wallace A. E. Jones Paul Phelton Dewey Kelley
Houston	1	9/ 2/30	2,005.80	1/ 5/31	Chas. H. Mee Eugene Wano Neal Conley	1,333.32	4/ 2/31	Chas. H. Mee Thos. Sutton J. W. Thomason
Huddleston	1	7/29/30	3,284.64	1/ 5/31	Chas. H. Mee Clarence Majors L. O. Hardy	3,673.20	4/ 4/31	C. L. Ray E. L. Browning W. E. Childs

DEFENDANT'S EXHIBIT X—Continued

Lease	Well No.	Date well came in	January pot.	Date	Witness	April pot.	Date	Witness
Key	1	9/21/30	.....	.....	.....	1,354.50	4/ 6/31	W. S. Tyer Albert Davis J. B. Abbott
Key	2	10/14/30	2,029.92	1/11/31	Chas. H. Mee R. E. Clark Paul H. Sullens	2,079.00	4/ 3/31	Chas. H. Mee C. E. Long E. C. McIntyre M. L. Young
[fol. 380]								
Lard	1	10/29/30	58,131.84	1/12/31	Chas. H. Mee J. E. Starks J. E. Hoover	55,575.08	4/ 1/31	Chas. H. Mee K. S. McNabb D. C. Wilson
Martin	1	5/24/30	3,369.60	1/10/31	H. H. Ferrall J. L. Chenault Neal Conley	8,876.40	4/ 7/31	H. H. Ferrall F. J. Heigle K. S. McNabb
Miller	1	9/ 9/30	4,412.76	1/11/31	Chas. H. Mee Neal Conley J. R. Holden	3,777.60	4/ 3/31	Chas. H. Mee K. S. McNabb C. R. Welch
Milner	1	7/12/30	7,311.20	1/ 9/31	Chas. H. Mee C. M. Keeler Carl Bashara K. S. McNabb	7,150.56	4/ 7/31	Albert Davis A. C. Garrison C. W. Bolts L. C. Rice
Milner	2	7/31/30	8,481.60	1/ 8/31	Chas. H. Mee A. R. Holloway Casey Cole	8,033.76	4/ 5/31	Chas. H. Mee A. C. Garrison
Moore	1	9/ 3/30	1,680.30	1/ 5/31	Chas. H. Mee Neal Conley Eugene Wano			
S. Owens	1	2/ 3/31	.....	.....	.....	52,035.84	4/ 5/31	Chas. H. Mee Robert Black S. E. Hawkins Melvin Rogers

Page	1	8/ 7/30	1,701.12	1/13/31	Chas. H. Mee C. W. McIntyre	2,609.52	4/ 6/31	C. L. Ray Jesse Shipley Paul H. Sullens
Page	2	8/15/30	2,991.36	1/ 4/31	Chas. H. Mee A. E. Black	2,647.44	4/ 6/31	C. L. Ray Jess Shipley Paul H. Sullens
Podman	1	10/16/30	1,253.88	1/29/31	Clyde Hornshon E. G. Dahlgren J. E. Hoover	928.80	5/11/31	Chas. H. Mee C. E. Long J. R. Irvin
Storey	1	7/16/30	10,027.44	1/ 6/31	Chas. H. Mee F. L. Bensfield	8,542.68	4/ 5/31	Chas. H. Mee Robert Black Virgil Swope
Thornton	1	9/24/30	11,965.92	1/ 6/31	Chas. H. Mee W. W. Walcutt	11,762.28	4/ 4/31	C. L. Ray E. L. Browning W. E. Childs
Townsend	1	6/14/30	2,763.84	1/10/31	Chas. H. Mee J. L. Chenault A. H. Housewright K. S. McNabb	3,078.24	4/ 6/31	Chas. Houghton W. C. Stevens R. E. Adams
Trumbly	1	10/17/30	4,797.48	1/10/31	Taylor Mayfield Neal Conley	4,968.96	4/17/31	Chas. H. Mee Neal Conley R. J. Black L. C. Rice
Wepaco	1	10/29/30	56,748.36	1/ 8/31	Chas. H. Mee R. E. Clark E. P. Meadows	55,374.96	4/ 1/31	Chas. H. Mee Fred Farrell L. C. Rice
Whitfield	1	2/18/31	.....	.....	.....	44,126.58	4/24/31	Chas. H. Mee W. H. Jarvis W. E. Best C. E. Long
Wilson	1	10/ 7/30	55,416.36	1/15/31	Chas. H. Mee E. G. Dahlgren A. J. Hannah	52,164.30	4/ 1/31	Chas. H. Mee F. H. McCann Joy Sneed

DEFENDANT'S EXHIBIT X—Continued

[fol. 381]

Lease	Well No.	Date well came in	January pot.	Date	Witness	April pot.	Date	Witness
Sunray Oil Co.								
Mead	1	12/28/30	66,168.00	2/18/31	P. H. Pryor C. E. Long	65,659.44	4/ 4/31	P. H. Pryor K. S. McNabb
Olafson	1	10/11/30	3;318.00	1/23/31	P. H. Pryor E. G. Dahlgren Paul H. Sullens			
Rinehart & Donivan	1	12/28/30	71,490.00	3/ 2/31	P. H. Pryor C. E. Long	68,708.18	4/ 2/31	P. H. Pryor L. C. Rice
Twyford-Smith	1	12/13/30	51,865.00	2/12/31	B. B. McDanil E. G. Dahlgren J. B. Abbott L. C. Rice	47,766.96	6/ 3/31	P. H. Pryor Carl Bashara
Wellman Oil & Refining Co.								
Shepherd	1	8/12/30	.....	.....	.....	2,827.80	6/15/31	W. J. Wellman C. M. Keeler D. E. Ingle C. Davis Jack Critcher
Westgate Oil & Gas Co.								
Kelsey	1	1/21/31	17,120.28	3/26/31	F. C. Hall C. M. Keeler	17,179.56	4/ 7/31	Dean Sill C. M. Keeler J. B. Abbott L. C. Rice
Wilson	1	3/28/31	.....	.....	.....	27,833.16	6/18/31	J. E. Bitler Paul H. Sullins J. H. Burns

Wilcox Oil & Gas Co.

Short	1	2/28/31	.....	.....	.....	12,105.60	5/12/31	A. T. Johnston C. M. Keeler
Wright	1	3/22/31	.....	.....	.....	10,243.20	6/ 6/31	A. F. Johnston C. M. Keeler J. C. Rohr Paul Sullens L. G. Maxwell

Wrightsmith Oil Co.

Smith	1	7/15/30	9,828.00	1/28/31	E. R. Welch E. G. Dahlgren L. C. Rice	6,221.22	4/ 7/31	E. R. Welch J. S. McNabb J. R. Irvin
Smith	2	10/20/30	5,670.00	3/14/31	H. B. Jones K. K. Kwnely L. C. Rice Lee C. Cottrell	6,016.50	4/10/31	E. R. Welch J. H. Bond C. E. Long J. L. Thomas

[fol. 382] Defendants' Exhibit "Y", Record, p. 376, summary of potentials by companies, which is in words and figures as follows, to wit:

[fol. 383] DEFENDANTS' EXHIBIT Y

Summary

Company	No. of wells	January potentials	April potentials
Acme Oil & Gas Co.	1	46,850.52	42,686.40
Addition Pet. Corp.	1	None	61,939.50
Anderson-Prichard	25	144,460.14	381,143.18
Balckstock et al.	1	6,252.00	4,371.60
Blackwell Oil & Gas Co.	3	None	52,134.00
British-American Oil Co.	9	287,234.52	276,078.96
California Operating Co.	1	None	3,685.50
Capitol Prod. & Refg. Co.	1	48,639.66	46,419.84
Century Pet. Co.	5	98,480.16	154,046.28
Champlin Refg. Co.	4	32,585.82	22,823.28
Chatham Oil Co.	2	106,929.48	101,289.96
Coline Oil Co.	31	86,760.06	70,350.64
Continental Oil Co.	5	49,710.96	32,911.80
Cromwell-Franklin	20	294,722.60	264,863.46
Dengail Oil & Gas Co.	3	3,177.54	80,538.66
Denver Prod. & Refg. Co.	4	75,124.68	96,787.98
Donleon Oil Co.	1	47,064.66	54,335.70
Eason Oil Co.	1	None	38,532.66
Empire Oil Co.	3	6,592.02	27,027.96
Wirt Franklin Pet. Corp.	34	265,861.48	265,520.94
Hall & Briscoe	1	20,865.84	8,644.32
I. T. I. O.	253	1,590,718.21	1,679,187.79
Johnson-Dabney-Patton	1	None	18,769.68
Jones Bros.	2	18,238.20	49,230.00
J. E. Mabee	4	74,488.50	167,301.24
R. A. McArthur Inc.	1	55,967.92	55,249.68
Mid-Kansas Oil & Gas Co.	8	24,537.00	24,559.99

Company	No. of wells	January potentials	April potentials
Minnehoma Oil & Gas Co.	1	65,271.12	61,474.56
Oils Incorporated	4	62,628.24	162,118.98
Phillips Petroleum Corp.	38	778,346.28	1,403,816.42
Plains Petroleum Corp.	1	None	5,292.00
Prairie Oil & Gas Co.	14	49,890.00	51,582.24
Reynolds & Unruh	1	24,004.92	24,831.06
Russell Pet. Co.	1	11,753.88	14,663.28
[fol. 384]			
J. C. Shaffer Inc.	5	38,845.98	83,114.52
Shell Petroleum Corp.	8	11,508.48	10,153.98
Sinclair	39	427,314.50	390,168.42
Skelly	16	275,990.04	259,639.40
Slick-Urschel	71	882,495.00	1,006,101.54
Sunray	4	192,841.00	182,129.58
Wellman O. & Refg.	1	.....	2,827.80
Westgate	2	17,120.28	45,012.72
Wilcox	2	.....	22,348.80
Wrightsmith	2	15,498.00	12,237.72
Grand Total	635 wells	6,238,769.69	7,817,944.02

[fol. 385] Defendants' Exhibit "Z", Record, p. 376, status of estimated wells, which is in words and figures as follows, to wit:

[fol. 386]

DEFENDANT'S EXHIBIT Z

Status of Estimated Wells as of 7 A. M. June 19th, 1931

Lease	Well No.	Potential Estimated	Jan.	Feb.	March	April	May	June 1–19th	Manner in which potential was estimated
Coline Oil Co.									
Clauer	1	1,626	.....	63	.....	.....	.....	.....	24 hr. test July 27th, 1930.
Warren	2	1,800	108	1,655	.....	.....	.....	.....	377 bbls. in 5 hrs. Oct. 24, 1930.
"	5	1,008	50	.....	.....	.....	.....	.....	421 bbls. in 10 hrs. Sept. 23rd, 1930.
	3	4,434							
Cromwell-Franklin									
Trosper Park	1	35	.....	.....	647	1,672	.....	.....	32 bbls. in 22 hrs. Nov. 29, 1930.
"	3	645	.....	.....	1,333	126	.....	.....	24 hrs. test Sept. 25, 1930.
"	4	366	.....	.....	356	.....	592	928	231 bbls. in 14 hrs. Sept. 28, 1930.
"	5	220	.....	.....	802	136	.....	.....	24 hr. test Sept. 13, 1930.
"	6	9,936	332	.....	.....	5,840	12,599	3,724	1656 bbls. in 4 hrs. Dec. 13, 1930.
"	11	1,272	.....	.....	.....	.....	.....	.....	741 bbls. in 14 hrs. Nov. 24, 1930.
"	12	588	.....	.....	.....	.....	.....	.....	552 bbls. in 22½ hrs. Sept. 22, 1930.
"	14	1,794	.....	.....	.....	493	.....	.....	598 bbls. in 7 1/3 hrs. Dec. 27, 1930.
"	15	535	.....	.....	.....	2,866	577	.....	24 hr. test Sept. 18, 1930.
"	16	1,064	778	151	574	4,771	2,327	63	666 bbls. in 15 hrs. Oct. 28, 1930.
	10	16,455							
Franco-Dominion									
Echroat	1	37,884	.....	New well	6,314	.....	.....	6,179	6314 in 4 hrs. March 11, 1931.
	1	37,884							
Wirt Franklin									
Eacock	1	5,004	.....	.....	1,357	337	3,143	4,295	834 bbls. in 4 hrs. Dec. 7, 1930.
Lowery	5	9,722	.....	239	.....	.....	.....	.....	9722 bbls. in 24 hrs. May 2, 1930.

Theimer	2	269	.....	.....	.....	.....	.....	.....	68 bbls. in 6 hrs. July 13, 1930.
"	6	2,870	.....	.....	640	2,211	1,623	.....	645 bbls. in 4 hrs. Dec. 9, 1930.
"	9	11,886	140	63	12,357	2,335	.....	.....	1638 bbls. in 4 hrs. Dec. 12, 1930.
	5	30,751							
					Hall & Briscoe				
Grace	1	18,564	155,516	301	.....	.....	.....	.....	4641 bbls. in 6 hrs. Jan. 17, 1931.
	1	18,564							
					I. T. I. O.				
Billen	1	532	.....	.....	325	1,603	.....	105	24 hr. test Nov. 12, 1930.
A. Bodine	2	903	.....	.....	.....	.....	.....	.....	414 bbls. in 11 hrs. Nov. 20, 1930.
B. Anderson	2	27	.....	.....	.....	.....	.....	.....	24 hr. test Dec. 15, 1930.
A. Brokaw	2	3,072	280	31	.....	.....	942	.....	64 bbls. in 30 mins. Dec. 13, 1930.
"	3	144	.....	.....	.....	.....	.....	.....	48 bbls. in 8 hrs. Oct. 17, 1930.
"	4	32	.....	.....	.....	.....	.....	.....	24 hr. test Nov. 24, 1930.
Butterfield	1	7,632	2,528	1,260	5,898	100	966	.....	949 bbls. in 3 hrs. Dec. 1, 1930.
Button	1	37	.....	.....	.....	.....	.....	.....	24 hr. test Dec. 1, 1930.
"	2	124	.....	.....	.....	.....	.....	.....	24 hr. test Dec. 15, 1930.
"	3	360	287	.....	.....	.....	.....	503	339 bbls. in 22 hrs. Nov. 20, 1930.
"	5	930	.....	.....	.....	.....	.....	.....	753 bbls. in 19 hrs. 25 mins. Oct. 11, 1930.
C. Button	1	264	.....	.....	.....	.....	.....	.....	11 bbls. in 1 hr. Oct. 12, 1930.
L. Canfield	1	408	.....	.....	.....	.....	.....	.....	113 bbls. in 6 hrs. 40 mins. Nov. 11, 1930.
"	2	258	142	382	540	.....	.....	.....	43 bbls. in 4 hrs. Nov. 25, 1930.
N. Emerson	1	60	.....	.....	.....	.....	.....	.....	16 bbls. in 5 hrs. 20 mins. Nov. 17, 1930.
"	9	7,171	.....	.....	.....	.....	.....	.....	249 bbls. in 50 mins. Nov. 3, 1930.
E. Fortson	1	247	252	.....	.....	.....	.....	.....	24 hr. test Oct. 3, 1930.
"	2	262	75	.....	.....	.....	.....	.....	41 bbls. in 4 hrs. May 24, 1930.
Fortson-Farley	1	10	388	.....	.....	.....	.....	.....	10 bbls. in 24 hr. test July 1, —
" "	3	60	.....	.....	.....	.....	.....	.....	57 bbls. in 22½ hrs. June 29, 1930.

DEFENDANT'S EXHIBIT Z—Continued

Lease	Well No.	Potential Estimated	Jan.	Feb.	March	April	May	June 1–19th	Manner in which potential was estimated
[fol. 387]									
M. Fuzzell	2	387	.....	.....	.....	.....	.....	.....	129 bbls. in 8 hrs. Oct. 14, 1930.
Ivanhoe Add	2	11,416	1,066	1,984	.....	552	195	.....	121 bbls. in 15 mins. Nov. 25, 1930.
Jennings	1	3,213	.....	.....	.....	.....	.....	.....	1071 bbls. in 8 hrs. Oct. 20, 1930.
B. Johnson	2	1,936	.....	.....	.....	.....	.....	.....	968 bbls. in 12 hr. test June 5, 1930.
Mackey	1	794	.....	.....	.....	.....	.....	461	167 bbls. in 5 hrs. Aug. 16, 1930.
Salsman	2	856	.....	.....	.....	.....	.....	.....	547 bbls. in 15 hrs. Oct. 28, 1930.
Theimer	4	24	.....	.....	.....	.....	.....	.....	24 bbls. in 24 hrs. Nov. 23, 1930.
T. Fuzzell	1	494	.....	.....	.....	.....	.....	.....	199 bbls. in 9 hrs. 40 mins. Oct. 9, 1930.
.....	3	177	.....	.....	.....	.....	.....	.....	24 hr. test Oct. 18, 1930.
Trosper	1	27	.....	.....	.....	.....	.....	.....	27 bbls. in 24 hrs. June 1, 1930.
Watters	3	822	.....	.....	.....	.....	.....	.....	548 bbls. in 16 hrs. Oct. 15, 1930.
Wheeler	1	16	.....	.....	.....	.....	.....	.....	16 bbls. in 24 hrs. July 20, 1930.
Worley Hgts.	1	2,592	.....	.....	.....	.....	.....	.....	432 bbls. in 4 hrs. Dec. 20, 1930.
	33	45,287							
					Marco Oil & Refining Co.				
Holder	1	1,248	.....	.....	.....	.....	.....	.....	24 hr. test Dec. 10, 1930.
	1	1,248							
					Mid-Texas Petroleum Corp.				
Flo-Hills	1	7,288	.....	13,771	7,481	.....	.....	.....	24 hr. test Oct. 9, 1930.
	1	7,288							
					Morgan Petroleum Corp.				
Stout	1	24,216	5,800	.....	.....	.....	.....	3,779	112,000 bbls. in 4 days 15 hrs. 20 mins. Dec. 25, 8 A. M. to 1:20 P. M. Dec. 29th, 1930.
	1	24,216							

Sinclair Oil & Gas Company									
Kinter	2	54	.....	.....	.....	.....	.....	.....	24 hr. test Oct. 20, 1930.
"	3	216	.....	.....	.....	.....	.....	.....	44 bbls. in 5 hrs. Oct. 10, 1930.
"	4	56	.....	.....	.....	.....	.....	.....	26 bbls. in 11 hrs. Dec. 2, 1930.
"	5	51	.....	.....	.....	.....	.....	.....	29 bbls. in 13 hrs. 30 mins. Oct. 13, 1930.
"	6	18	.....	.....	.....	.....	.....	.....	16 bbls. in 21 hrs. Dec. 1, 1930.
"	8	15	.....	.....	.....	.....	.....	.....	24 hr. test Oct. 31, 1930.
"	9	31	.....	.....	.....	.....	.....	.....	24 hr. test Nov. 25, 1930.
"	10	89	.....	.....	.....	.....	.....	.....	24 hr. test Sept. 9, 1930.
School Land 54	1	3,018	.....	.....	.....	.....	.....	.....	503 bbls. in 4 hrs. Oct. 31, 1930.
" "	5	790	.....	.....	.....	.....	.....	.....	24 hr. test Oct. 29, 1930.
" " 67	7	609	384	1,637	1,314	933	1,165	400	26 bbls. in 1 hr. March 31, 1931.
Stamper	3	250	.....	.....	.....	.....	.....	.....	24 hr. test Dec. 7, 1930.
"	4	21	.....	.....	.....	.....	.....	.....	24 hr. test Dec. 17, 1930.
"	6	156	.....	.....	.....	.....	.....	.....	52 bbls. in 8 hrs. Dec. 8, 1930.
Vencl	4	359	.....	.....	.....	.....	.....	.....	24 hr. test Oct. 31, 1930.
"	7	1,224	888	.....	328	.....	683	.....	204 bbls. in 4 hrs. Dec. 1, 1930.
	16	6,957							
Skelly Oil Company									
Ainsworth	3	3,678	.....	.....	.....	.....	.....	.....	2759 bbls. in 18 hrs. Dec. 14, 1930.
Hoops	1	6,836	.....	.....	.....	.....	.....	.....	3418 bbls. in 12 hrs. Sept. 5, 1930.
"	2	2,770	.....	.....	.....	.....	.....	.....	1853 bbls. in 16 hrs. Sept. 2, 1930.
"	6	1,134	.....	.....	.....	.....	.....	.....	756 bbls. in 16 hrs. Sept. 10, 1930.
	4	14,418							
Slick-Urschel Inc.									
Hoops	1	1,872	.....	.....	.....	.....	.....	.....	78 bbls. in 1 hr. Nov. 25, 1930.
Hussman	1	514	.....	.....	.....	.....	.....	.....	514 bbls. in 24 hrs. test Oct. 27, —
Zecherle	1	814	39	.....	1,292	1,587	.....	.....	643 bbls. in 19 hrs. Nov. 16, 1930.
	3	3,200							
Wellman Oil & Refg. Co.									
Houser	1	2,964	.....	3,884	2,012	.....	.....	.....	494 bbls. in 4 hrs. Dec. 8, 1930.
Walker	3	4,128	1,726	1,601	2,870	1,283	.....	599	180 bbls. in 1½ hrs. Jan. 30, 1931
	2	7,092							
Grand total	81	217,794							

[fol. 388] Corporation Commission Order No. 829, offered in evidence at the time of the submission of the cause on August 3, 1931, identified as Defendants' Exhibit "A", in words and figures as follows, to-wit:

DEFENDANTS' EXHIBIT A

Order No. 829. Cause No. 2041

(Orders Issued July 1, 1914, June 30, 1915)

In re Application of THE OIL PRODUCERS and Others to Relieve the Pipe Line Companies from Taking or Prorating the Oil from Any New Wells to be Drilled in the Next Four Months

OPINION AND ORDER

By the COMMISSION:

The application herein was submitted to the Commission by agreement as a result of a conference with all the producers in what is known as the north and northeast sections of Oklahoma. This territory is being served by three marketing pipe lines—Prairie, the Texas and the Gulf. The marketing facilities consume—the Prairie 120,000 barrels per day; the Texas, 20,000 barrels per day and the Gulf 20,000 barrels per day. In addition to this amount, the Waters-Pierce, the Petroleum Products Company and numerous independent refineries take an additional amount of approximately 40,000 barrels per day, while the gross production of the territory served by these pipe lines is approximately 300,000 barrels. This leaves approximately 100,000 barrels surplus daily, or three million barrels each month. These figures are based upon the potential production of the wells that are now producing oil and should the wells be brought in that are now down to the oil sand, the production would be increased within a very short time to 340,000 barrels.

The present pipe line facilities, together with the local refineries, were sufficient to take all the oil produced in this field until what is known as the Bartlesville sand in the Cushing Field was developed. The proven area of what is known as the Bartlesville sand in the Cushing field com-

prises about 3,300 acres. The Bartlesville sand is about 2,700 to 2,800 feet in depth, and the same ranges from fifty to sometimes one hundred feet in thickness. The wells when they are first brought in produce on an average of over 1,000 barrels daily. These wells have a natural flow with, in some instances, a remarkable pressure for a number of months. This is the greatest high grade oil pool that has been discovered in the history of petroleum. It is the judgment of some expert, considering the thickness of the sand that it contains from twenty-five to fifty million barrels of high grade oil, depending upon whether or not careless drilling should injure the field by flooding it with water or foreign substances.

Four miles north of the principal development of this field, Bartlesville sand has again been discovered with prospects of a possible duplication of the production in the developed field. While between these fields the Bartlesville sand has not been productive in every instance. Practically all of the wells in this field up to date have been what are known as line wells. Interior drilling of the various tracts [fol. 389] of land is limited. The total daily production of the Bartlesville sand in the Cushing field is now 150,000 barrels per day, or half of the entire production of the northern Oklahoma fields.

This production with the prospects of a northern extension and a southern extension could easily be increased in a few months to 200,000 barrels per day.

The Layton and Wheeler sand, which was looked upon as a menace to prices last December, has decreased in production very rapidly. Practically all wells are down to a pumping basis with a total production in this sand of approximately 6,500 barrels a day. The Wheeler sand lays above the Bartlesville sand and is about 2,100 feet in depth. The Layton sand is shallower than the Wheeler, being found at about 1,600 feet. The proven area of these sands greatly exceeds the Bartlesville area at the present time. There are now 150 wells producing from the Bartlesville sand and approximately 500 wells from the Wheeler and Layton sand.

The older fields for some months past have been marking time, waiting to see what would happen at Cushing, hoping that there would be no repetition of the Glenn Pool experi-

ence which happened prior to the time of statehood when oil was reduced to thirty cents a barrel.

By mutual arrangement during the month of May, it was agreed that the pipe lines should run all of the oil from the old field and from the Wheeler and Layton sand in the Cushing field, and that the oil in the Bartlesville sand at Cushing should be prorated according to the potential capacity of the various producing properties. There is now being taken about twenty-two per cent of this production; hence, the accumulated surplus oil is in this field. It is apparent that this oil cannot all be conserved. It is not being stored in earthen and steel tankage, and many thousand barrels have been dammed up in the creeks. The Commission is now asked to relieve the pipe line companies from prorating or taking any part of the oil from wells that may hereafter be drilled for a period of four months. To prescribe a regulation of this kind under the existing conditions that grow up in oil fields without giving some producer an advantage over another is a most difficult undertaking. Yet, one of the greatest natural resources of Oklahoma should not be destructively produced and the oil brought to the surface at a time when there are absolutely no facilities for caring for all of same.

In the case of the Ohio Oil Company v. State of Indiana, the Supreme Court of the United States, by Justice White, held that oil under ground was analogous to wild animals and becomes property only when reduced to possession, and [fol. 390] also clearly indicates the power over a natural resource of this character.

The Commission would not be justified in acting upon the suggestion or request of this kind except to prevent waste of a product which the public has need for and must use. If a forest of timber were being ruthlessly and carelessly destroyed by fire or sawed down and permitted to float down rivers, the public would find some way of stopping such destruction. When gas is found and the owner thereof carelessly lets it escape into air, the State on behalf of the public prescribes regulations for the preservation of the same. We know of no reason that would be derogatory to public policy, why the Commission could not relieve the pipe lines from pro-rating oils from the new wells upon conditions and regulations as may be fair and reasonable

to all concerned for a short period of time, during which time either storage facilities or increased pipe line facilities may be investigated.

It should be remembered that these wells flow from their own pressure and cannot be stopped without danger of ruining the oil in the well. Again, this commodity is not shipped long distances by rail and to all the different markets of the world like other commodities. Its only means of transportation whereby it may meet competition is through the established pipe lines, and oil cannot be profitably shipped over the country the same as lumber or coal. This would not be true if pipe lines were not the most economical means of transportation. That is, oil transported by rail cannot compete in price with oil transported by pipe lines.

In limiting the production in the northern fields of Oklahoma there may be many conditions arise where lease obligations require certain performances and where parties have holdings with little or no production, all of which must be considered with a view of doing exact justice and equity as near as may be practicable.

It is therefore ordered that the Texas Company, the Gulf Pipe Line Company of Oklahoma, and the Prairie Oil & Gas Company shall be relieved as common purchasers from taking the production of any new wells brought in on and after the first day of July, 1914, except upon the following conditions:

First. Where lease conditions require wells to be drilled by a definite date. Such wells shall be drilled on the lease at a point where it will not be necessary for adjoining properties to off-set the same.

Second. Where properties have no production and adjoining properties may have a tendency to drain the same, even though they would not come strictly under the off-set rule.

[fol. 391] Third. All wells now in process of drilling, except such wells as require other new wells to be an off-set, drilling shall be continued on such wells.

Fourth. All wells necessary for existing producing off-sets.

Fifth. Such drilling as may be necessary on short term leases to comply with federal court orders where receivers have been appointed, all of which together with any special case where in fact inequality or injustice may be done by compliance with the above rules, will be handled especially by the Commission and determined at the time the parties desire to begin drilling.

Sixth. The owners of all producing properties in this Cushing district shall file a plat, showing their producing wells and such wells as are contemplated to be drilled under this order, with the Commission in the office of A. E. Watts, the Umpire of the Cushing field, at 203 Clinton Building, Tulsa, Oklahoma. All plats shall be filed by July 10, 1914.

Seventh. The pipe lines are relieved from running oil from any well that is hereafter squibbed or shot in the Bartlesville sand in the Cushing, Okla., field during the period of this exemption.

Eighth. The pipe line companies shall be relieved from taking oil from any new well that may be drilled under the above exceptions if the same penetrates the Bartlesville sand at Cushing, Okla., more than sixty feet without the approval of the Corporation Commission for drilling the sand to a greater depth.

All special cases not coming under the above exceptions may be submitted to the Commission at any time, and it is suggested that a committee of five be appointed in the Cushing field, consisting of B. B. Jones, Chairman, H. F. Sinclair, Jno. H. Markham, Jr., Murray Doan, W. H. McFarland, and the umpire, A. E. Watts, should be ex-officio member of this committee.

It is also suggested that a committee be appointed in the other fields or localities where it may be necessary to see that these orders are carried out and to recommend to the Commission such exceptions to the orders as may be equitable and just to all concerned, and the umpire, A. E. Watts, should also be an ex-officio member of each committee and may be called upon any time by the remaining members of the committee or when the Commission may deem his services necessary.

Inasmuch as Providence has smiled so bountifully upon the producers of the Bartlesville sand in the Cushing field,

we believe that they can well afford to sacrifice some personal advantages which, to some extent may have been [fol. 392] acquired by their own diligence and conservatism, in order that this great industry might not fall into contempt by reason of the destructive production of crude petroleum.

This order shall be in full force and effect for a period of four months from July 1, 1914.

Corporation Commission. (Signed) J. E. Love, Chairman. (Signed) A. P. Watson, Commissioner. (Signed) Geo. A. Henshaw, Commissioner.

Attest: J. H. Hyde, Secretary.

Oklahoma City, July 1st, 1914.

[fol. 393] Corporation Commission Order No. 878, offered in evidence at the time of the submission of the cause on August 3, 1931, identified as Defendants' Exhibit "B", in words and figures as follows, to-wit:

DEFENDANTS' EXHIBIT B

CORPORATION COMMISSION OF OKLAHOMA

Supplemental Order No. 878. Supplementing Order No. 847

Cause No. 2041.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, Complainant,

vs.

MAGNOLIA PIPE LINE COMPANY, a Corporation; OKLAHOMA Pipe Line Company, a Corporation; Gulf Pipe Line Company of Oklahoma, a Corporation; The Texas Company, a Corporation, and Prairie Oil & Gas Company, a Corporation, Defendants

ORDER

At a hearing before the Commission, on this the 24th day of November, 1914, in the matter touching the sale and transportation of oil in earthen storage in the Healdton field, it appears that certain persons owning considerable quantities of oil in earthen tanks have made arrangements

to sell the same at a reduced price, and they desire to have the pipe line receive and transport the same without regard to the orders of this Commission heretofore made pro-rating the oil sold and transported among the various producers on the basis of their production.

On the hearing it appears that the oil, which is now sought to be sold and transported without regarding the former orders of the Commission and without pro-rating the same, has been placed in the earthen tanks since the order pro-rating the oil went into effect; that the owners of the oil in the earthen tanks have received the benefit of the former order of the Commission pro-rating the oil; and that it would be allowing them to dispose of a larger proportion of the oil produced from their leases than other producers are permitted to dispose of, if the amount of oil now held by them in earthen tanks should not be charged against them, or rather against their pro-rata share of the oil which they [fol. 394] are permitted to run through the Magnolia Pipe Line.

And it further appears to the Commission that if the privilege, sought by the producers who have sold their oil stored in earthen tanks, without regard to the pro-rating order, be granted, and the Magnolia Pipe Line Company should be permitted to purchase the same without pro-rating it, then the statute governing common purchasers and requiring such purchasers to treat all producers alike would be violated. But in view of the fact that, on account of seepage and evaporation, the producers of oil stored in earthen tanks have sustained a considerable loss, and unless they are permitted to dispose of the oil so held by them they will sustain further loss, the producers not so situated have recognized some equities in their favor, and have indicated to the Commission that they would be willing for the producers holding oil in earthen tanks to be permitted to run the same on the basis of the price at which such stored oil is sold; that is to say, that the inspector in the Healdton Field should be authorized and directed, for every three and one-third barrels of earthen storage oil sold at thirty cents per barrel to charge the producers so selling the same with having run two barrels of fresh oil at fifty cents per barrel.

It appears to the Commission that an order to this effect would conserve the oil in the Healdton Field and be fair and just to all parties.

It is, therefore, ordered by the Commission that the inspector in the Healdton Field be, and he is hereby, authorized and directed to pro-rate all earthen storage oil sold by the producers of said field against their respective [fol. 395] daily runs; and in all cases where the same is sold by the producers for less than the market price that the same shall be pro-rated on a basis of value or price received therefor, and not barrel for barrel; for example: for every three and one-third barrels of earthen storage oil sold at thirty cents per barrel, the producer so selling the same shall be charged on the pro-rating sheet with having run two barrels of fresh oil at fifty cents per barrel, the present market price; and the same basis shall be maintained as to pro-rating if said oil is sold for any other or different price than thirty cents per barrel.

Provided: That the total amount of storage oil determined on the above basis shall be charged up against the party running the same and a deduction of fifty per cent of the pipe line run due such party for each day shall be deducted and the amount so charged against him for storage oil shall be credited with a similar amount. This process shall continue until the amount of stored oil charged to the accounts shall be exhausted.

The Magnolia Pipe Line Company is hereby relieved from the provisions of the Common Purchaser Act to the extent of carrying out this order.

This order shall be in full force and effect on and after the 26th day of November, 1914.

Corporation Commission. (Signed) J. E. Love, Chairman. —— ——, Commissioner. (Signed) Geo. A. Henshaw, Commissioner.

Attest: (Signed) J. H. Hyde, Secretary.

Dated at Oklahoma City, this 25th day of November, 1914.

[fol. 396] Corporation Commission Order No. 920, offered in evidence at the time of the submission of this cause

on August 3, 1931, identified as Defendants' Exhibit "C", in words and figures as follows, to-wit:

DEFENDANTS' EXHIBIT C

CORPORATION COMMISSION OF OKLAHOMA

Order No. 920. Cause No. 2287

ARDMORE OIL PRODUCERS' ASSOCIATION, Complainant,

vs.

W. & F. OIL COMPANY et al. Similarly Situated, Defendants

Appearances:

For the Complainant: Chas. Von Weise, J. W. Herrald, and Wirt Franklin.

For the Defendant, W. & F. Oil Company, C. C. Herndon, and C. J. Wrightsman.

For the 1911 and Bayou Company, L. S. Dolman.

For the Corsicanna Petroleum Co., Geo. C. Greer.

For the Ardmore Refining Co., Hubert L. Mason.

FINDINGS OF FACT, OPINION AND ORDER

By HENSHAW, Commmissioner:

The complaint in this case was filed under the provisions of House Bill No. 168, "An Act defining and prohibiting waste of crude oil and petroleum," etc., otherwise known as the Oil Conservation Act, and alleges in substance: (1) That crude oil is being taken from the oil sands of the Healdton field in excess of the market demands. (2) That oil is being produced in said field in such manner and under such conditions as to constitute waste, and is being produced in excess of marketing facilities. (3) That certain producers are taking from the oil-bearing sands of said field a greater proportion of crude oil than that to which they are entitled under the provisions of Section 4 of the Act. (4) That oil produced in excess of the market demands is being placed in steel storage and in earthen storage, resulting in waste and irreparable damage and injury. (5) That specific acts are being committed whereby certain properties are producing more than their pro rata part of oil, thereby unduly draining adjoining properties; that

some of the oil so produced is being placed in earthen storage, and some in steel storage.

The petitioners pray that after due hearing the Commission promulgate rules and regulations for the prevention of waste of crude oil and natural gas in the Healdton field; that it promulgate rules and regulations for the taking of oil from the oil-bearing sands in said field and prescribe rules and regulations to determine the pro rata production of crude oil to be taken from the common pool by the individual operators.

[fol. 397] The petitioners further pray that the Commission make an order prohibiting the storing of crude oil or petroleum produced from the Healdton field, and for such other relief as may seem meet and proper.

After due publication, as provided by law, the complaint was heard by the Commission at Ardmore on April 9, 1915. No specific answers were filed but the representatives of the various producers appeared and evidence was introduced describing the conditions of the field. The case was then set for oral argument at Oklahoma City on April 23rd. All producers were permitted to file suggestions or briefs without formality, discussing the conditions and suggesting rules and regulations which in the judgment of the individual producers or parties interested would aid the Commission in prescribing practical rules and regulations that would conform to the law.

The facts according to the evidence are substantially as follows: That the potential production of the Healdton field is 70,000 barrels per day; that the pipe line facilities for transporting the oil from the field to the primary markets are (1) Magnolia Pipe Line, capacity about 15,000 barrels per day, running from Healdton field to Fort Worth and other refineries of the Magnolia Petroleum Company and to the Gulf Port-; (2) the Ardmore Refining Company's pipe line, capacity about 4,000 barrels per day, running from the field to the refinery in Ardmore; (3) the Thelma Pipe line, capacity about 2,000 barrels per day, running from the field to the town of Ringling on the Oklahoma, New Mexico & Pacific Railway. The total pipe line facilities of the field are now approximately 21,000 barrels. The purchasers of oil as shown by the evidence are the Magnolia Petroleum Company, from six to eight thousand barrels daily; the Ardmore Refining Company, from one

to two thousand barrels daily; the Thelma Pipe Line running a small amount to Ringling for rail transportation.

Within sixty days prior to the hearing, there had been from one hundred fifty to two hundred thousand barrels of oil taken from the field under what is known as "common carrier" runs to the Pierce-Fordyce Refinery at Fort Worth. The evidence further disclosed that certain properties had been producing oil greatly in excess of the pro rata amount based on the average daily consumption; that the 150,000 barrels of oil which had been run as "common carrier" runs were produced by one property of comparatively small acreage. The Commission has ascertained outside of the record that at one time more than six hundred thousand barrels of oil had been placed in earthen storage; that at the time of the hearing, most of this oil [fol. 398] had been removed. It was shown that oil had been recently pumped from wells and placed in earthen storage. (We are informed, out of the record, that as a result of the heavy rains during the month of May much of this earthen storage was carried off by the floods and that it greatly injured the crops and vegetation on farm lands, and also the water supply, particularly stock water.)

The evidence discloses that there is no unreasonable amount of gas being wasted.

At the hearing and during the argument the producers and attorneys representing various interests had different opinions as to what rules or regulations could or should be made under the law that would be practicable and equitable; however, they did agree that the storing oil in earthen reservoirs should be prohibited.

It was contended by Mr. Von Weise, one of the attorneys representing petitioners, in substance, that the storage of crude oil in wooden or steel tanks should be limited to such an amount as would meet the daily demand of the transporting and marketing facilities of the field for a period of ten days; that if for any reason any producer might not care to avail himself of his daily market pro rata, he should be permitted to store same in wooden or steel reservoirs; that in the event any producer or producers by their own efforts secured a market for their production, they should be permitted to supply that market without being pro rated amongst other producers, provided that this amount should be charged against them in their pro rata

runs to the Magnolia or other common purchasers; that all producers should be required to report to the conservation officer the amount of oil by them taken daily from the sands and that no producer should be permitted to take more than his pro rata part from the common source of supply and that interference with the fulfillment of private contracts should be avoided if possible.

Mr. Dolman, representing the Bayou and 1911 Companies, asking that certain producers specifically mentioned be prohibited from producing any more oil from the sand until such time as other producers have produced an equal amount, based upon the potential production of the respective wells.

Mr. Franklin, President of the Ardmore Oil Producers' Association, made recommendations substantially the same as those of Mr. Von Weise.

Mr. Skillern filed a brief without making specific recommendations, recommending, however, that some action should be taken to protect the small producers.

[fol. 399] Mr. Hernstadt urges that the Commission make rules and regulations strictly to carry out the provisions of the law.

Mr. Clark, of the McMan Oil Company, suggests that earthen storage should be prevented; that rules for the conserving of gas during drilling should be prescribed, using the "mudding in" or some other practicable process to prevent the escape of gas; that the restriction of production to market demands is a difficult problem.

Mr. Lincoln McKinley urges that an order should be made immediately stopping all production in excess of immediate market demands, but providing that a small amount of oil may be stored.

Mr. W. D. Teague, royalty owner, urges that the operators be allowed to build storage and continue their drilling in order to protect the royalty owners.

Mr. C. D. Goddard, of the Humble Oil Company, urges that the production of oil be pro rated alike as to all producers.

Mr. E. F. Lee of the 1911 Oil & Gas Company; Mr. G. M. Rushing, of the 1914 Oil & Gas Company, and Mr. Fred J. Harle, of the Climax Oil & Gas Company, urge that storage

oil be limited to the probable demands for thirty days, and that no exceptions be made in favor of producers having contracts.

Mr. J. M. Critchlow, of the Dundee, Samoset and Alma Oil Companies, recommends no earthen storage; steel storage only when producers have a market demand for oil; that when one producer obtains a market he should be permitted to fill his contract, regardless of the effect on the adjoining property.

Mr. Byron Drew, representing the Bayou and 1911 Companies, recommends that the law be carried out to the letter and that production be strictly prorated among producers.

Mr. C. J. Wrightsman of the W. & F. Oil Company, suggests that earthen storage should be prohibited; that steel storage by producers not affiliated with a pipe line is a commercial necessity; that the law interpreted in the spirit of its enactment would require the Commission to act when conditions are monopolized and the market is restricted from fair, reasonable and competitive opportunity; that that is the condition in the Healdton field at present; that under the present restricted market the outside purchasers of oil should be made common purchasers; that any purchaser can be made a common purchaser.

Mr. George Greer, general attorney for the Corsicana Petroleum Company, filed a brief discussing the law and the practical application thereof. With the exception of rules [fol. 400] preventing actual and unreasonable waste, his conclusions are that a part of the law is unconstitutional, and, if strictly construed, other parts are impracticable.

Sections 1, 3 and 4 of House Bill No. 168 are as follows:

"Section 1. That the production of crude oil or petroleum in the State of Oklahoma, in such manner and under such conditions as constitute waste, is hereby prohibited."

"Section 3. That the term 'waste' as used herein, in addition to its ordinary meaning, shall include economic waste, underground waste, surface waste, and waste incident to the production of oil or petroleum in excess of transportation or market facilities or reasonable market demands. The Corporation Commission shall have the power to make rules and regulations for the prevention of such wastes and for the protection of all fresh water strata, and oil and gas-bearing strata, encountereded in any well drilled for oil."

"Section 4. That whenever the full production from any common source of supply of crude oil or petroleum in this state can only be obtained under conditions constituting waste, as herein defined, then any person, firm, or corporation, having the right to drill into and produce oil from any such common source of supply, may take therefrom only such proportion of all crude oil and petroleum that may be produced therefrom, without waste, as the production of the well or wells of any such person, firm or corporation, bears to the total production of such common source of supply. The Corporation Commission is authorized to so regulate the taking of crude oil or petroleum from any or all such common sources of supply, within the State of Oklahoma, as to prevent the inequitable or unfair taking, from a common source of supply, of such crude oil or petroleum, by any person, firm, or corporation, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another."

Section 5 authorizes the Commission to ascertain the potential production of the respective wells and to appoint an agent for that and other purposes.

Section 6 authorizes the Attorney General or other parties in interest to file proceedings before the Commission and prescribes the procedure.

Section 2 is not involved in the complaint. Section 3 defines waste, in addition to the ordinary and accepted meaning of the term waste, to be (1) economic waste, (2) underground waste, (3) surface waste, and (4) waste incident to the production of crude oil in excess of the transportation or marketing facilities or reasonable market demands.

The Commission finds from the evidence that there is actual waste which results from the storing of oil in earthen tanks; also actual waste in a less degree in the storing of oil in wooden and steel tanks in excess of a reasonable amount to supply the market demands.

The Commission further finds that if the total potential production of the Healdton field were produced each day, the same would be in excess of transportation or marketing facilities or reasonable market demands; that the taking from the oil sands the total potential production, or seventy or more thousand barrels per day, under conditions as exist [fol. 401] in the Healdton field would constitute waste.

The Commission further finds that the oil in the Healdton field is in one common stratum of oil sand and constitutes one common source of supply; that the present market demands of the Healdton field are not in excess of 15,000 barrels per day, that the maximum transporation facilities will not exceed 25,000 barrels per day; that the market demands vary from day to day; that under the present market demands there is less than 25 per cent of the total possible production of the oil being marketed.

The manner in which the proportion of this amount may be taken from the sands by each producer is prescribed by Section 4, as follows:

"That whenever the full production from any common source of supply of crude oil or petroleum in this state can only be obtained under conditions constituting waste as herein defined, then any person, firm, or corporation, having the right to drill into and produce oil from any such common source of supply, may take therefrom only such proportion of all crude oil and petroleum that may be produced therefrom, without waste, as the production of the well or wells of any such person, firm or corporation, bears to the total production of such common source of supply."

The Commission is authorized to prescribe rules and regulations for the taking of oil under certain conditions so as to prevent inequitable or unfair operations by the producers. The amount to be taken is fixed by law. The manner of pro rating is fixed by the law. The only duty left to the Commission, after ascertaining the fact that producing the maximum potential capacity of the field each day results in waste, is to ascertain from day to day and from time to time the pro rata part of the oil that each producer may take from the ground without constituting waste as defined by the law. The law by its own terms prevents the producer from taking oil in excess of his pro rata share as defined therein.

It is insisted by some that the enforcement of this law (the conservation act) is impracticable and by others that the law is unconstitutional. The sections of the law which are sought to be enforced by this proceeding do nothing more than make it possible for each oil producer to obtain his pro rata part of the oil which he would get if there were market facilities or a market demand for the entire production.

That the state may prevent the unreasonable waste in the production of crude petroleum and regulate the taking from the oil sands, has been definitely settled by the Supreme Court of the United States.

The conservation law under which we are now acting provides that oil shall not be produced under such conditions as constitute waste.

[fol. 402] In Ohio Oil Company vs. Indiana, 177 U. S. 190, page 202, Justice White said:

"Does the peculiar character of the substance oil and gas which are here involved, the manner in which they are held in their natural reservoir, the method by which and the time when they may be reduced to actual possession, or become the property of a particular person cause them to be an exception to the general principle applicable to other mineral deposits, and hence subject them to different rules. True it is that oil and gas, like other minerals, are situated beneath the surface of the earth, but except for this one point of similarity in many other respects they greatly differ. They have no fixed situs under a particular portion of the earth's surface within the area where they obtain. They have the power, as it were, of self-transmission. No one owner of the surface of the earth, within the area beneath which the gas and oil move can exercise his right to extract from the common reservoir, in which the supply is held, without, to an extent, diminishing the source of supply as to which all other owners of the surface must exercise their rights. The waste by one owner caused by a reckless enjoyment of his right of striking the reservoir, at once, therefore, operates upon the other surface owners. Besides, whilst oil and gas are different in character, they are yet one, because they are unitedly held in the place of deposit."

The court then reviewed the cases of Brown vs. Vandergrift, 80 Pa. 147; Hague vs. Wheeler, 157 Pa. 324; Jones vs. Forrest Oil Co., 194 Pa. 279; Peoples Gas Co. vs. Tiner, 131 Ind. 277, and many other cases.

It is judicially ascertained that oil has no fixed situs, and likewise determined that the respective and relative rights of the common or individual owners may be regulated and protested by law. The relation of ownership of oil beneath the surface is somewhat analogous to the ownership of the

individuals that compose the entire public in the wild game of the country, with the distinction that the individual owners of the surface cannot be entirely prohibited from taking oil from the oil sands, whereas, the state by law can prevent the public from taking wild game or may say in what numbers and under what conditions and in what season it may be reduced to possession. Wild game has no fixed situs and may voluntarily move from place to place without limitation, whereas, oil may move from place to place in a limited area by reason of pressure, gravitation or suction. In discussing this phase of the case, Justice White, on page 210, says:

"In things farae naturae all are endowed with the power of seeking to reduce a portion of the public property to the domain of private ownership by reducing them to possession. In the case of natural gas and oil no such right exists in the public. It is vested only in the owners in fee of the surface of the earth within the area of the gas field. This difference points at once to the distinction between the power which the lawmaker may exercise as to the two. In the one, as the public are the owners, every one may be absolutely prevented from seeking to reduce to possession. * * *. On the other hand, as to gas and oil the surface proprietors within the gas field all have the right to reduce to possession the gas and oil beneath. They could not be absolutely deprived of this right which belongs to them without a taking of private property. But there is a coequal right in them all to take from a common source of supply the two substances which in the nature of things are united, though separate. It follows from the essence of their right and from the situation of the things as to which it can be exerted, that the use by one of his power to seek to convert a part of the common fund to actual possession may result in an undue proportion being attributed [fol. 403] to one of the possesssors of the right to the detriment of the others, or by waste by one or more to the annihilation of the rights of the remainder. Hence it is that the legislative power, from the peculiar nature of the right and the objects upon which it is to be exerted, can be manifested for the purpose of protecting all of the collective owners, by securing a just distribution to arise from the enjoyment, by them, of their privilege to reduce to pos-

session and to reach the like end by preventing waste. This necessarily implied legislative authority is borne out by the analogy suggested by things ferae naturae, which it is unquestioned the legislature has the authority to forbid all from taking, in order to protect them from undue destruction, so that the right of the common owners, the public, to reduce to possession, may be ultimately efficaciously enjoyed. Viewed, then, as a statute to protect or to prevent the waste of the common property of the surface owners, the law of the State of Indiana which is here attacked because it is asserted that it divested private property without due compensation, in substance, is a statute protecting private property and preventing it from being taken by one of the common owners without regard to the enjoyment of the others."

Sections 3 and 4 of this Act come clearly within the language of Chief Justice White in that the object is to protect the common owners who have a right to take oil from the common source of supply, that those who may have pipe lines or markets may not totally destroy the rights of others who may not be so fortunately situated.

It may be urged that some of the producers in the Healdton field have gone to great expense in establishing pipe lines and refineries and securing markets and that certain parties have contracted to furnish a certain amount of oil within a given time and the state has no authority to pass laws to interfere with such enterprise.

It may be urged that the Corsicana Petroleum Company and the Magnolia Pipe Line Company have built pipe lines, built a refinery at Fort Worth and a refinery at Beaumont and Corsicana, and extensive marketing facilities throughout the States of Texas, Oklahoma, and other states; that they have the right to extract from the common source of supply a sufficient amount of crude oil at Healdton to supply all of their market demands and the contracts entered into. Let us assume that these companies control eighty per cent of the total market outlet of this field. They would have the other producers absolutely at their mercy.

A refinery has been established at Ardmore with pipe line facilities from the Healdton field. While this refinery will probably not use more than 2,000 barrels per day, yet in principle is it different from that of the Magnolia? A pri-

vate individual in south Texas may go to an individual producer and buy a half million barrels and at the same time the adjoining property owners that would be immediately drained by extracting this amount of oil from the common source of supply could not sell a barrel of oil. Must the field be turned over entirely to the Magnolia Petroleum [fol. 404] Company, the other pipe line companies and the individual that makes his private contract, and the state be powerless to protect a citizen who has an equal right to take oil from the field?

Justice White says there is no difference in oil and gas inasmuch as they are found in the same strata and both capable of involuntary transmission under the surface of the earth. Hence, marketing and taking gas from the common source of supply would furnish the best example to illustrate the equitable and legal principle involved. In Oklahoma all the large cities are piped for the distribution of gas. The distributing plant is connected with pipe lines reaching the gas field. These particular pipe lines reach all the available markets. The State of Oklahoma passed a law requiring those who had the markets for gas and the pipe lines to purchase gas in a given field from all parties who had gas to offer ratably. Some of the gas companies are now attacking this law in the Federal Court. The state, by law, requires those who may be drilling for oil who strike gas to prevent the gas from escaping into the air. Near Okmulgee a party at great expense in drilling for oil struck a forty-million cubic foot gas well which he offered to sell to the gas companies or pipe lines at their own price and they refused to buy it, but complained to the county attorney, who forced the owner of the gas well to cap same to prevent the gas from escaping. The pipe lines are now taking this gas through another well in the same field and the owner of the capped well must sit idly by with his investment and see the gas extracted from under his land. If the state cannot protect the common owners of property, the Supreme Court of the United —— has yet to find that provision of our Constitution which will permit one owner of a common pool of oil or gas to destroy and exploit the rights of others.

The more recent decisions of the Supreme Court reiterate the principles announced by Justice White, above quoted.

In the case of Lindsley vs. Natural Carbonic Gas Company, 220 U. S. 61, the court said:

"It does not take from the surface owner the right to cap the underground rock and to draw from the common supply but consistently with the continued existence of that right so regulates its exercise as reasonably to conserve the interests of all who possess it. That the state consistently with due process of law may do this is a necessary conclusion from the decisions of the case cited."

(Referring to Ohio Oil Co. vs. Ind. 177 U. S. 190.)

The last case which has been called to our attention is West vs. Kansas Natural Gas Co., 221 U. S. 261. The Supreme Court said:

"And, we repeat, again, there is no question in the case of the regulating power of the state over the natural gas within its borders. The appellees concede the power * * * "

[fol. 405] It is contended that where contracts were made prior to the enactment of the law or prior to the findings of fact herein by the Commission as to the conditions and waste in the Healdton field, that such contracts are binding and that it is beyond the power of the state to impose such restrictions upon one of the parties thereto that the same could be complied with if he should be limited in the amount of oil that he may take from the common source of supply.

No individual producer in an oil field where the source of supply is common has an absolute property in the oil beneath the surface until it is raised and reduced to possession and capable of being removed or transported at the will of the owner. When the same is abstracted from the sand and placed in tanks it has the same legal status as property of the owner as wheat in a granary and the state would have no authority to regulate by law the manner or under what conditions the oil should be disposed of by the owner, unless by reason of quantity or other conditions it became a public nuisance.

Justice White in Ohio Oil Company vs. Indiana, 177 U. S. 205, quoted from Jones vs. Forrest Oil Co. 195, Pa. 374, as follows:

"From these cases we conclude that the property of the owner of land in oil and gas is not absolute until it is actually in his grasp and brought to the surface."

On page 207, Justice White says:

"Reviewing its own (Indiana) previous adjudications which we have cited and those of the Supreme Court of the State of Pennsylvania, to which we have also referred, it was decided that the owners of the surface of the land within the gas field, whilst they had the exclusive right on their land to sink wells for the purpose of extracting the oil and gas, had no right of property therein until by the actual drawing of the oil and gas to the surface of the earth they had reduced these substances to physical possession. It was further held that in consequence, of the nature of the deposits, of their transmissability, of their independence, of the rights of all and of the public at large, the state could lawfully exercise the power to regulate the right of the surface owners among themselves to seek to obtain possession and prevent the waste of the products in which all the surface owners within the area wherein the gas and oil were deposited, as well as the public, had an interest, because in the preservation of these substances the well being and prosperity of the entire community was largely involved. And it was upon the opinion announced in that case that the court rested its decree in the case now under review."

Again on page 210, Justice White says:

"It being true as to both animals, ferae naturae and gas and oil, therefor, that whilst the right to appropriate and become the owner exist, proprietorship does not take being until the particular subject of the right becomes property by being reduced to actual possession."

[fol. 406] An individual may contract to sell one thousand quail. At the time he made the contract there may be no law preventing him from acquiring that number. In the meantime a law may be passed limiting the number of quail which one person may acquire. An individual may sell a certain amount of oil. If he has this oil in storage there is no law preventing him from filling the contract. If he has not the oil in storage he takes his chances under the law of extracting the required amount from the common source of supply under such limitation as may be imposed by the state

for the purpose of guaranteeing to all producers that their rights to take their proportion of the oil from the field shall be protected. This principle is fundamental and is supported by authorities.

The authority of the state to protect coequal rights of individuals whose rights may depend upon drawing a pro rata share of a natural commodity from a common source of supply is not new. More than eighteen years ago the Supreme Court of Colorado had a similar subject under consideration wherein certain farmers in an irrigated district had to depend upon water from one common source of supply. One of the parties had made a contract that he should have a certain amount of water. Afterwards a law was passed requiring the water to be distributed pro rata, according to the ascertained necessities of the individuals.

In the case of White v. Farmers High Line Canal & Reservoir Co., 31 L. R. A. 829, the court said:

"That part of this contract which attempts to give each consumer the right to determine the amount of water to which he is entitled with permission to take the same regardless of the rights of other consumers of the ditch company was declared void by the court of appeals."

The court further said:

"The right claimed by the consumer is a right, the exercise of which is positively prohibited by the statutes of this state. The third section provides that it sh-ll be the duty of those owning or controlling such canals or ditches to appoint a superintendent whose duty it shall be to measure the water from such canal or ditch through the outlet to those entitled thereto according to his or her pro rata share. Where there are a large number of consumers taking water from the same ditch the excessive use by some may absolutely deprive others of water at times when its application to thirsty soil is absolutely necessary to prevent the total failure of growing crops. So, also, as between different ditches, if one, in case of scarcity, takes from a public stream water to which it is not entitled, it must be at the expense of others."

The court further said:

"It is said, however, that as the contract under which the defendant claims in this case was exercised to the passage

of the Act of 1887, the parties to this action are not bound by that statute; * * * this argument has been advanced in many cases, but, we believe, never successfully, where, as here, it is in opposition to the police power of the state."

[fol. 407] The court then cites and reviews: Northwestern Fertilizing Co. v. Hyde Park, 7 U. S. 659; Buffalo East Side R. Co. v. Buffalo R. Co., 111 N. Y. 132; Bertholf v. O'Reilly, 74 N. W. 509; People v. Budd, 117 N. Y. 1; Richardson v. Boston, 65 U. S. 24 How.; Tucker v. Ferguson, 89 U. S. 22 Wall.

The court finally holding:

"So our act of 1887 governing the distribution of water by ditch companies carrying water for hire is binding upon the parties to this action, notwithstanding the agreement of March 22, 1873."

The Commission in this case will predicate its order upon the authority vested in the Commission by Sections 1, 3, 4, and 5 of the law known as the Conservation Act, and particularly that part regulating the equitable taking of oil among the operators.

The producers in this case are complaining. It should not be overlooked however, that the public also has an interest in the prevention of waste of oil. It may be insisted that the wells in the Healdton field may be operated at their maximum capacity and the oil placed in steel storage. Such storage in the Healdton field with one year's insurance costs approximately 25 cents per barrel. The maximum market price for oil in that field is now 30 cents per barrel. Even though there was no waste of oil in steel tankage by evaporation this practice would border on economic waste as between the producers. Should one producer or several producers force the other producers to install steel storage when the oil placed therein is worth but little more than the cost of storage and practically cause the producer to lose all of his rights in the proper production of oil from the common source of supply? We believe this would be economic waste.

We should not overlook the fact that the record in this case shows that the total production of the field is now

70,000 barrels per day. (And from sources outside of the record, it has since been increased to eighty or possibly one hundred thousand barrels per day and it is claimed by the producers could be increased to one hundred fifty thousand barrels within a very short time.)

It is shown from the record that the evaporation of oil in steel storage is from ten to twenty-five per cent of the value of the oil the first year. We do not mean in quantity. The lighter and more valuable oils escape. Hence, if we consider the minimum amount fixed by the witnesses as waste of oil in steel storage to be 10 per cent of the value and 80,000 barrels of oil were stored each day for one year in the Healdton field there would be a loss of eight thousand barrels per day. Would it not be a spectacle for the public to assemble each morning and witness [fol. 408] the destruction of eight thousand barrels of a commodity that is absolutely necessary for the prosperity and business of the country—a commodity which once being destroyed can never be replaced by any artificial means known to science? We may raise an excessive agricultural crop such as cotton. It may be destroyed yet another crop can be produced. It is not so with oil.

It may be claimed that it is to the interest of the public to produce oil in such extravagant and wasteful manner that the price thereof may be reduced to 10 cents per barrel. We witnessed an appalling example of this at Beaumont, Texas, where a great field of oil was discovered and recklessly exploited and operated and the rights of individual owners were destroyed. Millions of barrels of this oil were sold as low as three cents per barrel. It was put upon the market at a price as cheap as one could pump and transport water from the Gulf of Mexico. Railroads installed oil burners; the public used the oil because it was cheap. Within a year's time it was destroyed. Thereupon oil burners were torn from industrial plants at great expense; whereas, if the oil at Beaumont had been produced so as to prevent waste, the oil consumers who had to go back to coal within a short time could have continued to burn oil at reasonable prices for several years. Thereafter gasoline was again placed on the market at 25 cents per gallon and continued at that price for several years.

We are now exploiting the greatest oil fields of the world—Cushing and Healdton. This oil should be pro-

duced so as to prevent waste—not necessarily to influence the price of crude oil, but it should be produced and preserved in such manner as not to be destroyed, so that the public, the users and consumers may receive the full benefits therefrom, and in order that reasonable prices for the product may be enjoyed by the public at large for a number of years..

When the Healdton and Cushing fields are destroyed this may mark the passing of the last great oil fields in the mid-continent. Immediately gasoline and fuel oil would advance to the old prices of 25 cents per gallon for gasoline and more than $1.00 per barrel for fuel oil.

The Legislature had in mind mainly two objects when Secs. 1, 3, 4 and 5 of this law were passed; First, to regulate the production of oil by the operators so that the weaker or small producer would be guaranteed his pro rata part of the oil; and, second, that the oil should be produced and preserved in such manner that the public would enjoy the full benefits thereof at reasonable prices, not only for the present time but for years to come.

[fol. 409] It is insisted that more or less confusion will necessarily arise because of different producers selling oil individually. By the cooperation of the producers Sec. 4 of the act can be carried out and the oil pro rated and all contracts filled with but little, if any, difficulty. It would be unreasonable to prevent oil to be taken from the sand because some producer may refuse to participate in the market, thereby causing other properties in the field to be shut down. When a producer is given a reasonable opportunity to deliver his pro rata part of the oil being taken from the sand and he fails to embrace that opportunity, he should thereafter be estopped from asserting his right to prevent others in the common source of supply taking oil in the meantime.

The operation of this law, to a large extent, will have the effect of making all purchasers of oil common purchasers to the extent of giving all parties who had not otherwise run their pro rata share of oil an opportunity to participate in the fulfillment of this contract. Otherwise the party making the contract would be limiting his ability to fulfill the same to the extent of his pro rata of oil being taken from the field. It is immaterial whether the oil is run by a

common purchaser, common carrier or otherwise. The total amount taken from the field must be produced by the different producers or an opportunity given the different producers to participate in the production of the amount so taken.

Wherefore the Commission considers, orders and adjudges that in order to prevent waste and to regulate the taking of oil from the common source of supply, and to prevent the inequitable and unfair taking of oil from the common source of supply in the Healdton field, the following rules and regulations are hereby made and established:

(1) The practice, plan or device of placing or holding crude oil in earthen reservoirs (sometimes called pond storage) heretofore in use in the Healdton field is hereby discontinued and prohibited.

(2) The use of wooden or steel storage is permitted under the limitations, restrictions and qualifications hereinafter found.

(3) No operator (person, firm or corporation having the right to drill into and produce oil from the common source of supply) shall take from the potential production of the Healdton field more than his fair and equitable proportion thereof, and in order that the potential production of said field may be determined for the purpose of establishing a basis for the fair and equitable taking of oil from the com- [fol. 410] mon source, it is ordered that A. L. Walker, heretofore appointed as agent of the Commission, or his successor in office, make a gauge of each oil well in said field and as its rules and regulations for the taking or making of such gauge, the Commission authorizes its agents to use and uniformly apply the method and plan now recognized and in common use.

(4) That upon ascertaining the potential production of the field the agent of the Commission shall thereupon ascertain the transportation or market facilities and ascertain the amount of oil necessary to meet the daily market demands.

(5) That the daily actual production of the oil field shall be restricted and confined to such a quantity as is necessary to supply the probable daily market demand with the ex-

ception hereinafter provided; that is to say, the raising of the oil from the sand or the production from the common source of supply shall be done by the operators in said field only to the extent of the amount necessary to meet the ascertained daily market demands and under the conditions set forth in the rules and regulations of the Commission.

(6) The capacity or potential production of each well in said field shall be ascertained in the manner and by the means above outlined and thereupon the owner in the operation thereof shall be restricted in raising oil from underground to the surface to the following extent; that is to say, the agent of the Commission in said field shall in accordance with these rules ascertain the ratio of the daily market demand to the potential production and then the actual production shall be limited to the market demand, and in supplying the market demand the operators shall be permitted to produce ratably, that is to say, only such a per cent of the possible production of each well as is necessary to make up upon the whole the daily market demand.

(7) In order to guard against unforeseen casualties and contingencies and to the end that the market may not at any time be deprived of an adequate supply, the use of wooden or steel storage permitted as aforesaid is hereby authorized for the storage of the whole or potential production of any well or number of wells on any one lease or property for a period of ten days, but in running the oil so produced, it shall be run according to the fair and equitable pro rata of the operator according to the plan hereby established, or in other words, if an operator chooses to accumulate his whole possible production for a period of ten days, then upon the sale of the same he shall be wholly precluded and prohibited from raising any other oil from the sand to the surface until he is due another run upon the pro rata basis.

[fol. 411] (8) The Commission in avoidance of any controversy pertinent to the legal status of common carrier and common purchaser runs applies the rules and regulations wholly, and therefore both directly and indirectly, to the production of oil and not to the marketing of the same, or rather to the raising of the oil from the sands to the surface, and hereby authorizes its agent in the regulation of fair and equitable production as aforesaid to prohibit the

raising of oil from the sands to the surface except such as can be marketed under these rules and regulations.

(9) The storage of oil by any common purchaser or purchasers bought ratably in open market bona fide to be held as stock under the usual custom of the trade for the purpose of refining or for sale of the consumer is not prohibited by the rules hereinbefore prescribed.

(10) These rules shall not be interpreted so as to require the oil to be produced ratably each day, but the amount produced from any one well within a period of thirty days shall not exceed the pro rata permissible daily production.

This order shall be in full force and effect on and after its publication as required by law.

Corporation Commission. (Signed) Geo. A. Henshaw, Commissioner. (Signed) W. D. Humphrey, Commissioner.

Attest: (Signed) Edw. F. McKay, Secretary, Acting.

Oklahoma City, June 5, 1915.

Chairman Love did not participate in the consideration or promulgation of this order on account of sickness.

[fol. 412] Letter of Instructions, marked Defendants' Exhibit "D", offered in evidence at the time of the submission of the cause on August 3, 1931, in words and figures as follows, to-wit:

DEFENDANTS' EXHIBIT D

Letter of Instructions

Oklahoma City, June 10, 1915.

Mr. A. L. Walker, Agent for the Corporation Commission, Healdton, Oklahoma.

DEAR SIR: The Corporation Commission is advised by you as follows:

(1) That at the time House Bill No. 168, sometimes referred to as the Oil Conserveation Act, was passed, to-wit: on February 11, 1915, certain parties operating in the

Healdton oil field had sold and continued to sell oil produced in said field to purchasers not acting as common purchasers in the field, and that such parties or operators had taken from said field oil in excess of their pro rata share of the oil deposit; and that such parties or operators on account of the advantage so obtained have been denied by the agent of the Commission, sometimes referred to as the Conservation Officer, the privilege of running their pro rata share of the oil produced from the common supply since the date of the act on the theory that such producers having taken as indicated from said field or from the common supply an amount of oil equal to (and possible greater than) their pro rata part or share should be in equity and good conscience restrained from over-reaching the other producers operating in said field and being common owners of the common supply by denying them of the privilege of participating in the common purchaser runs extended ratably to the common owners of the common supply.

(2) That since the enactment of said law certain producers or operators have sold to parties not buying as common purchasers in said Healdton field an amount of oil exceeding the pro rata part or share of such parties in the oil of said field, constituting the common supply of the common owners thereof; and that in addition to the amounts so taken and disposed of (by common carrier runs as distinguished from common carrier purchasers) such parties are insisting that they should participate ratably in runs made to common purchasers without being charged with their common carrier runs.

You, after advising the Commission, as stated, request instructions covering said propositions.

Referring to the first proposition your attention is called to Revised Laws of Oklahoma 1910, Section 4307:

"Every corporation, joint stock company, partnership or other person, claiming or exercising the right to carry or transport crude oil or petroleum or any of the products thereof, by pipe line for hire or otherwise, within the limits of this State, as allowed by and upon compliance with the requirements of this article, as owner, lessee, li- [fol. 413] censee, or by virtue of any other right or claim, which is engaged in the business of purchasing crude oil or petroleum therein, shall be deemed common purchasers

thereof and shall purchase all of the petroleum of, or which may be reasonably reached by its pipe lines or gathering branches, without discrimination in favor of one producer or one person as against another, and shall fully perform all of the duties of a common purchaser; but if it shall be unable to perform the same, or shall be legally excusable from purchasing and transporting all of the petroleum produced, then it shall purchase and transport petroleum from each person or producer ratably in proportion to the average daily production; and such common purchasers are hereby expressly prohibited from discriminating in price or amount for like grades of oil or facilities as between producers or persons; and in the event such purchaser is likewise a producer, it is hereby prohibited from discriminating in favor of its own production or storage, or production or storage in which it may be interested, directly or indirectly, in whole or in part, and its own production and storage shall be treated as that of any other person or producer."

This section seemingly is mandatory and it prohibits discrimination by a common purchaser in favor of or against any producer or operator. It appears to be the duty of all common purchasers under this section to purchase ratably according to the production offered by the operators or owners of any common supply, but this law does not devolve upon a common purchaser the duty of inquiring after purchasing ratably, whether the purchaser stored the remainder or would sell it to other parties.

On February 11, 1915, this law was supplemented by the Conservation Act and now while it remains the duty of the common purchaser to buy ratably, the performance of this duty is aided by the latter act requiring the operators to produce ratably so that pro rata sales will follow as a natural consequence.

Such regulations as existed prior to the enactment of House Bill No. 168 pertained to common purchasers and did not in any way refer to the lifting of the oil from the sand and after delivering his pro rata of accumulated production to the common purchaser, the operator could store the remainder of his oil or sell it in any available market, but in the course of time the Supreme Court of the United States held that pipe lines are common carriers, and this

changed market conditions theretofore depending upon the activity of common purchasers, so that thereafter they depend both upon the capacity of the common carriers and the demands of the common purchasers.

All the regulations up to date of the latter act were in aid of the common purchaser requirements of the former act, and they in no way attempted to provide what operators should do with oil produced over and above the supply demanded by the common purchasers; hence, with apparent dependence upon the law all operators with oil above ground might claim the right to sell such supply ratably to the common purchasers, up to February 11, 1915, or since said time, provided the production accumulated prior thereto.

Referring to the second proposition, your attention is

[fol. 414] called to House Bill No. 168, Section 4.

"That whenever the full production from any common source of supply of crude oil or petroleum in this state can only be obtained under conditions constituting waste as herein defined, then any person, firm or corporation, having the right to drill into and produce oil, from any such common source of supply may take therefrom only such proportion of all crude oil and petroleum that may be produced therefrom, without waste, as the production of the well or wells of any such person, firm or corporation, bears to the total production of such common source of supply. The Corporation Commission is authorized to regulate the taking of crude oil or petroleum from any of such common sources of supply, within the State of Oklahoma, as to prevent the inequitable or unfair taking, from a common source of supply, of such crude oil or petroleum by any person, firm, or corporation, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another."

It is to be observed that the Corporation Commission is authorized to regulate the taking of oil from any common source of supply within the state so as to prevent the inequitable and unfair taking thereof, or in other words the legislature seems to constitute the Corporation Commission an arbiter to see that the common supply is justly and equitably enjoyed by the common owners thereof.

It has been said that the laws exist primarily and that it is the function of legislatures and courts to define and apply it, and if so there is nothing new in the embodiment of this statute, however, novel the application thereof might seem.

Under this statute no producer has a legal right to take from the common source of supply more than his pro rata share thereof, and in equity and good conscience, and, therefore, in law, he had no right to do so independent of the statute.

In the recent order of the Commission definite findings were made concerning conditions in the Healdton field, and under the statute and likewise under the law independent of the statute as set forth and discussed in said order, no operator has a right to take from the sands in said field more oil than he can market without waste, and in accordance with the just and equitable taking provided for in the order which is to be ratably according to the ratio of the average daily market demands to the average daily potential production measured by concurrent periods of thirty days.

If you find parties disposed to cavil with the law it might be suggested that the same is not dependent upon the statute but exists without enactment being called forth by conditions necessitating the same, and that this principle has been recognized by the owners and operators of the Healdton field. In this we are referring to the law and not necessarily to the authority of the Commission, under which law even though the Commission might not act, a court of [fol. 415] equity would command the right and restrain the wrong. It is a matter of common knowledge too recent and too well understood to have escaped even the commercialized mind and conscience that at a time when the operators in the Healdton field admitted that they were unable to protect themselves against each other, they applied to this Commission for assistance and that upon April 30, 1914, and November 26, 1914, the Commission, acting upon the unanimous request of the common owners of the common supply in the Healdton field, undertook to offer the assistance prayed for by them in an endeavor to promote justice and equity in the operations in said field.

At this time it is too late for parley concerning the dates of legislative enactments for justice and equity as indicated are commanded by the law independent of the statute and

the operators in said field are estopped by their own acts from contesting the plan by them invoked and by the Commission at their request adopted.

If this plan cannot be enforced by the Corporation Commission with reference to the conditions existing prior to February 11, 1915, a court of equity is not without jurisdiction.

The Commission in the order above mentioned found upon the hearing of April 9, 1915, that the conditions in the Healdton field were such that the daily realization of the potential production would constitute waste; that the market demand and transportation facilities were inadequate to take care of the entire production and that storing of the surplus over and above the market demands in steel storage would result in waste, both actual and economic.

These conditions existed not only upon the date of the order but at the time of the trial and likewise upon the date of the enactment of the conservation law, and out of the conditions found by the Commission which were already known to the public, the said act and the necessity therefor arose.

You are, therefore, advised to direct your attention to conditions in the Healdton field, and see that oil is produced ratably and only ratably in accordance with the order of the Commission, and if any producer or operator in said field has taken from the common source of supply since February 11, 1915, (an umpire was in the field at said time) more than his ratable proportion or just and equitable share thereof, you will so adjust matters as to equalize the production ratably, since the date aforesaid (that being the date of the conservation bill) to the end that the common owners of the common supply in said field may enjoy ratably their common rights therein.

Very truly yours, W. D. Humphrey, Commissioner.

(See following page.)

[fol. 416] I concur in the above instructions with the suggestion that in cases where the common purchaser had not taken the full pro rate share of a producer prior to the enactment of the law, because such producer had sold oil to others than a common purchaser and had in fact taken his full pro rata share from the common source of supply, such

common purchaser may perform his duty under the law as it existed at that time, provided the producer has oil in storage from which the deficiency in his pro rata runs to the common purchaser may be made; but that such producer should not take oil at this time from the common source of supply to make up this deficiency.

Geo. A. Henshaw, Commissioner.

[fol. 417] Endorsed: Filed October 17, 1931. Theodore M. Filson, Clerk.

[fol. 418] Clerk's certificate to exhibits omitted in printing.

Endorsed on cover: File No. 36,299, 36,300. W. Oklahoma D. C. U. S. Term No. 485. Champlin Refining Company, appellant, vs. Corporation Commission of the State of Oklahoma and Paul Walker, E. R. Hughes, and C. C. Childers, etc., et al. Term No. 486. Corporation Commission of the State of Oklahoma and Paul Walker, E. R. Hughes, and C. C. Childers, etc., et al., appellants, vs. Champlin Refining Company. Filed October 26, 1931. File No. 36,299, 36,300.

FILE COPY

FILED
JUN 28 1931
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

No. 122

CHAMPLIN REFINING COMPANY, APPELLANT,

vs.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA AND E. R. HUGHES, C. C. CHILDERS, AND PAUL WALKER, COMPOSING THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA.

STATEMENT OF JURISDICTION.

HORACE G. McKEEVER.
HARRY O. GLASSER.
EDGAR A. DE MEULES.
GEO. S. RAMSEY.

(35,936)

TABLE OF CASES CITED.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931

No. 122

CHAMPLIN REFINING COMPANY, A CORPORATION, APPELLANT,

vs.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA AND E. R. HUGHES, C. C. CHILDERS, AND PAUL WALKER, COMPOSING THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, APPELLEES.

STATEMENT OF THE JURISDICTION OF THE UNITED STATES SUPREME COURT TO REVIEW ON APPEAL THE ORDER OF THE THREE-JUDGE COURT BELOW DENYING A TEMPORARY INJUNCTION.

The appellant, in support of the jurisdiction of this Court to review the above-styled cause on appeal respectfully states:

FIRST.

That appellant, as plaintiff below, commenced this action in the United States Court for the Western District of Oklahoma to enjoin the enforcement of (*a*) the Oklahoma Oil Curtailment Act, undertaking to vest the Corporation Commission of Oklahoma "with power to investigate and determine from time to time the actual value of such crude oil or petroleum by standards herein provided," upon determination of which by the Commission "the taking of crude oil or petroleum from any oil bearing sand or sands in the State of Oklahoma at a time when there is not a market demand therefor at the well at a price equivalent to the actual value of such crude oil or petfoleum" is prohibited, which in effect undertakes to vest the Corporation Commission with power to determine the price at which a producer of crude oil in Oklahoma must sell his oil upon production or quit producing, and (*b*) to enjoin the Corporation Commission of Oklahoma from making or enforcing various orders made by it prohibiting the appellant (and others similarly situated) from taking from its oil wells more than a small percentage of their oil production capacity, on the ground that said Curtailment Act within itself, and the orders of the Commission complained of, independent thereof or dependent thereon, violate the provisions of the Fourteenth Amendment to the National Constitution in that they and each of them deprive appellant of (1) its liberty of contract, (2) its property without due process of law, and (3) the equal

protection of the laws. Further, on the ground that the orders of the Corporation Commission complained of in the appellant's second amended and supplemental bill and amendment thereto violate the commerce clause of Section 8 of Article 1 of the National Constitution.

For a more definite statement of the constitutional questions raised by the pleadings and the record reference is here made to "APPELLANT'S DEFINITE STATEMENT OF THE POINTS UPON WHICH IT RELIES" for a reversal of this case, set forth in Appendix "A" hereto.

That the most pertinent sections of the Curtailment Act, as contained in Sections 7954 to 7958, inclusive, Oklahoma Compiled Statutes, 1921 (same being Sections 1, 2, 3, 4 and 5 of the Act approved February 11th, 1915) are as follows:

> "SECTION 7954. *Waste Prohibited.*—That the production of crude oil or petroleum in the State of Oklahoma, in such manner and under such conditions as to constitute waste, is hereby prohibited.
>
> "SECTION 7955. *Production and Sale Regulated—Corporation Commission.*—That the taking of crude oil or petroleum from any oil-bearing sand or sands in the State of Oklahoma at a time when there is not a market demand therefor at the well at a price equivalent to the actual value of such crude oil or petroleum is hereby prohibited; and the actual value of such crude oil or petroleum at any time shall be the average value as near as may be ascertained in the

United States at retail of the by-products of such crude oil or petroleum when refined, less the cost and a reasonable profit in the business of transporting, refining and marketing the same, and the Corporation Commission of this State is hereby invested with the authority and power to investigate and determine from time to time the actual value of such crude oil or petroleum by the standard herein provided, and when so determined said Commission shall promulgate its findings by its orders duly made and recorded, and publish the same in some newspaper of general circulation in the State.

"SECTION 7956. *Waste Defined—Protection.*—That the term 'waste' as used herein, in addition to its ordinary meaning, shall include *economic waste,* underground waste, surface waste and *waste incident to the production of crude oil or petroleum in excess of transportation* or *marketing* facilities or *reasonable market demands.* The Corporation Commission shall have authority to make rules and regulations for the prevention of such wastes, and for the protection of all fresh water strata, and oil and gas bearing strata, encountered in any well drilled for oil.

"SECTION 7957. *Production Regulated—Discrimination of Purchaser Prohibited.*—That whenever the full production from any common source of supply of crude oil or petroleum in this State can only be obtained under conditions constituting waste, as herein defined, then any person, firm or corporation, having the right to drill into and produce oil from any such common source of supply, may take therefrom only

such proportion of all crude oil and petroleum that may be produced therefrom, without waste, as the production of the well or wells of any such person, firm or corporation bears to the total production of such common source of supply. The Corporation Commission is authorized to so regulate the taking of crude oil or petroleum from any or all such common sources of supply, within the State of Oklahoma, as to prevent the inequitable or unfair taking, from a common source of supply, of such crude oil or petroleum, by any person, firm, or corporation, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another.

"SECTION 7958—*Wells Gauged—Governor to Consent.*—That for the purpose of determining such production, a gauge of each well shall be taken under rules and regulations to be prescribed by the Corporation Commission, and said Commission is authorized and directed to make and promulgate, by proper order, such other rules and regulations, and to employ or appoint such agents, with the consent of the Governor, as may be necessary to enforce this act."

That in addition to the above sections of the statute Section 7961 provides that "In addition to any penalty that may be imposed by the Corporation Commission for contempt" any violation of the Act "shall be a misdemeanor," punishable by "a fine in any sum not to exceed five thousand dollars ($5,000.00), or by imprisonment in the county jail not to exceed thirty (30) days, or by both fine and imprisonment."

That Section 3498, Oklahoma Compiled Statutes, 1921, provides that "Any corporation, person or firm may be fined by the Corporation Commission such sum, not exceeding five hundred dollars, as the Commission may deem proper, for the violation of any of its rules or requirements; and each day's continuance of such violation, after due service upon such corporation, person or firm of the order or requirement of the Commission, shall be a separate offense." That a complete copy of the Curtailment Act is hereto attached as Appendix "B."

SECOND.

Appellant's application for a temporary injunction was heard before a three-judge court organized under the provisions of Section 266 of the Judicial Code, as amended (U. S. C. 380) in January, 1931, and denied in an opinion, two judges concurring and one dissenting, on the 9th day of February, 1931.

THIRD.

For the order appealed from denying the temporary injunction see R. page 172. On the 22nd day of April, 1931, "application for appeal was presented." (See R. 336.) On May 18th, 1931, time for filing record in the United States Supreme Court was extended to June 12th, 1931 (R. 348.)

FOURTH.

That under Section 266 of the Judicial Code, amended (U. S. C. 380), "an appeal may be taken direct to

the Supreme Court of the United States from the order * * * denying, after notice and hearing, an interlocutory injunction in such case."

FIFTH.

That it is unnecessary to cite decisions of this Court upholding its jurisdiction in this case, as the statute plainly does so, but in order to show that the appeal is not frivolous we refer to the fact that one of the judges dissented; that Section 2 of the Act (Section 7955, Oklahoma Compiled Statutes, 1921) is a price-fixing section and void under the authority of Williams *v.* Standard Oil Co., 278 U. S. 235; that Section 2 is not a separable part of the Act and the Act must fall as a whole, but if a separable part, then the balance of the Act, without Section 2, is too vague and uncertain to constitute due process of law as required by the Fourteenth Amendment to the National Constitution in that the statute does not define or prescribe any standard by which the Commission could define economic waste, underground waste, and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or *reasonable market demand* (Connally *v.* General Construction Co., 269 U. S. 385; Cline *v.* Frink Dairy Co., 274 U. S. 445; International Harvester Co. *v.* Kentucky, 234 U. S. 216; United States *v.* Cohen Grocery Co., 255 U. S. 89); that the production and refining of crude oil is not a public or quasi public business (Tyson & Bro. *v.* Banton, 273 U. S. 418: Charles Wolf Packing Co. *v.* Court of Industrial Relations, 262 U. S. 522); that appellant

is a producer and refiner and controls ample transportation facilities.

SIXTH.

That the Corporation Commission, in making the orders complained of, acted in a legislative and administrative capacity, and although an appeal is allowed by the Curtailment Act to the State Supreme Court that court cannot exercise legislative powers (*In re* County Commissioners, 22 Okla. 435, 5th paragraph of the syllabus by the court; Atchison, T. & S. F. Ry. Co. *v.* State, 28 Okla. 797; St. Louis & S. F. R. Co. *v.* State, 28 Okla. 802; Shawnee Gas & Electric Co. *v.* State, 31 Okla. 505). The appellant had the right to invoke the jurisdiction of some court to test the validity of the Curtailment Act and the Commission's orders and in exercising that right had the privilege to elect to go into the United States Court without appealing to the State Supreme Court. The case falls completely in the rule in Bacon *v.* Rutland R. Co., 232 U. S. 134; also Prentis *v.* Atlantic Coast Line Co., 211 U. S. 210; Pacific Tel. & Tel. Co. *v.* Kuykendall, 265 U. S. 200; Pacific Tel. & Tel. Co. *v.* Cushman, 292 Fed. 930, and Oklahoma Natural Gas Co. *v.* Russell, 261 U. S. 290.

We respectfully submit that this Court has jurisdiction.

HORACE G. McKEEVER,
HARRY O. GLASSER,
EDGAR A. DE MEULES,
GEO. S. RAMSEY,
Attorneys for Appellant.

APPENDIX "A".

Appellant's Statement of Points Relied On.

(1) That Section 2 of the Act of the Oklahoma Legislature approved February 11th, 1915 (1915 Session Laws, 28, same as Sections 7954 to 7963, inclusive, Oklahoma C. St. 1921) hereinafter referred to as the Curtailment Act, undertakes to authorize the Oklahoma Corporation Commission to fix the price of crude petroleum oil produced in Oklahoma and is therefore void in that it is in violation of the Fourteenth Amendment to the National Constitution.

(2) That Section 2 of said Curtailment Act is not a separable part thereof and therefore the whole act must fall as in violation of the Fourteenth Amendment to the National Constitution.

(3) That if Section 2 of the Curtailment Act is so far separable that the remaining sections, or any part thereof, may be considered as independent of Section 2, then the Act, without Section 2, is too vague and uncertain to meet the requirements of due process of law guaranteed by the Fourteenth Amendment to the National Constitution.

(4) That the Curtailment Act is beyond the state's police power in that the production of crude oil is not a public or quasi public business.

(5) That the ownership of lands in fee and/or oil leases thereon and the extraction of crude petroleum oil therefrom through wells and the manufacture of the refined products from crude oil is not a devotion of appellant's property or business to a public use—that is, it is not a public or quasi public business authorizing the State Legislature to enact the said Cur-

tailment statute under the police powers of the State.

(6) That the Curtailment Act is in violation of the Fourteenth Amendment to the National Constitution in that it denies the appellant liberty of contract as defined by this court in Allgeyer v. State of Louisiana, 165 U. S. 578, and other decisions.

(7) That the Curtailment Act, as construed and enforced by the appellees, as members of the Oklahoma Corporation Commission, operates as a taking of appellant's property without due process of law guaranteed by the Fourteenth Amendment to the National Constitution.

(8) That appellees' rules and orders shown by the exhibits to appellant's Second Amended and Supplemental Bill, including the order of December 30th, 1930, No. 5413, being legislative in their nature and made by an instrumentality of the state, are state laws within the meaning of the National Constitution and although an appeal therefrom is allowed by the Curtailment Act to the Oklahoma Supreme Court, nevertheless as that court has no legislative power and can not be vested with such powers by the Legislature the appellant had the right to invoke the jurisdiction of the United States District Court to restrain the enforcement of said orders and rules of appellees without first appealing therefrom to the Supreme Court of Oklahoma.

(9) That each of the appellees' orders shown by exhibits to appellant's Second Amended and Supplemental Bill, including the order of December 30th, 1930, No. 5413, is void in that each as applied to appellant violates the commerce clause of Section 8 of Article 1 of the National Constitution.

(10) That appellees' orders complained of by appellant in its Second Amended and Supplemental Bill

and amendment thereto, including the order of December 30th, 1930, No. 5413, were made without any evidence before the Commission of actual or physical waste of crude petroleum in the Oklahoma oil fields in which appellant was and is a producer of crude oil and the enforcement of either of said orders against appellant constitutes a taking of appellant's property without due process of law and operates as a denial of appellant's property rights guaranteed by the Fourteenth Amendment to the National Constitution.

(11) That appellees' said orders, and each of them, are void because they and each of them were made without the Commission having first taken a gauge of each oil well as required by Section 5 of the Curtailment Act, thus rendering the enforcement of the orders, and particularly order No. 5413 of December 30th, 1930, under the high penalties prescribed by the Act and other Oklahoma statutes, such as excessive application of the appellees' powers as to deprive appellant of its property and liberty without that due process of law required by the Fourteenth Amendment to the National Constitution.

(12) That the pretended gauges of the oil wells upon which the potential production of crude oil was determined by the Commission and the orders complained of limiting the production of crude oil by appellant and other producers were based, are void and illegal gauges in that said gauges of the wells accepted and acted upon by the Commission were made by private persons, firms and corporations, and their employees, contrary to the Curtailment statute, and no gauge having been made or superintended by a state officer or impartial, uninterested official, each of appellees' orders is void in that the enforcement thereof, particularly in view of the high penalties prescribed

by the Curtailment Act and other statutes, deprives appellant of its property without due process of law.

(13) That appellant as the owner of the oil leases on lands in Oklahoma described in its Second Amended and Supplemental Bill is vested with the right to enter thereon, drill wells for oil and take through said wells all the oil it can find so long as it can find a market therefor satisfactory to itself or utilize in its own refinery, and that this right is safeguarded by the Fourteenth Amendment to the National Constitution.

(14) That appellant is the owner of valuable oil and gas leases in several of the Oklahoma oil fields from which it produces and had produced a long time before this suit was commenced and the orders of the Commission made, large quantities of crude oil which it manufactured into gasoline and other refined products at its refinery located at Enid, Oklahoma; that said Curtailment Act as enforced by the Commission by and through its orders complained of operates to deny appellant its liberty of contract and equal protection of the laws guaranteed by the Fourteenth Amendment to the National Constitution.

(15) That the Curtailment Act is an unconstitutional delegation of Legislative powers to the Corporation Commission, thus rendering the Commission's orders thereunder void.

APPENDIX "B".

House Bill No. 168, Chapter 38, Session Laws Oklahoma, 1915, Page 28.

Sections 7954 to 7963, Inclusive, Oklahoma Compiled Statutes 1921.

AN ACT defining and prohibiting the waste of crude oil or petroleum, providing for the equitable taking of the same from the ground and conferring authority on the Corporation Commission, prescribing the penalty for the violation of this Act, and declaring an emergency.

Be it enacted by the people of the State of Oklahoma:

Waste Prohibited.

SECTION 1. That the production of crude oil or petroleum in the State of Oklahoma, in such manner and under such conditions as to constitute waste, is hereby prohibited.

Production and Sale Regulated—Corporation Commission.

SECTION 2. That the taking of crude oil or petroleum from any oil-bearing sand or sands in the State of Oklahoma at a time when there is not a market demand therefor at the well at a price equivalent to the actual value of such crude oil or petroleum is hereby prohibited, and the actual value of such crude oil or petroleum at any time shall be the average value as near as may be ascertained in the United States at retail of the by-products of such crude oil or petroleum when refined less the cost and a reasonable profit in the busi-

ness of transporting, refining and marketing the same, and the Corporation Commission of this State is hereby invested with the authority and power to investigate and determine from time to time the actual value of such crude oil or petroleum by the standard herein provided, and when so determined said Commission shall promulgate its findings by its orders duly made and recorded, and publish the same in some newspaper of general circulation in the State.

Waste Defined—Protection.

SECTION 3. That the term "waste" as used herein, in addition to its ordinary meaning, shall include economic waste, underground waste, surface waste and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands. The Corporation Commission shall have authority to make rules and regulations for the prevention of such wastes, and for the protection of all fresh water strata, and oil and gas bearing strata, encountered in any well drilled for oil.

Production Regulated—Discrimination of Purchaser Prohibited.

SECTION 4. That whenever the full production from any common source of supply of crude oil or petroleum in this State can only be obtained under conditions constituting waste, as herein defined, then any person, firm or corporation, having the right to drill into and produce oil from any such common source of supply, may take therefrom only such proportion of all crude oil and petroleum that may be produced therefrom, without waste, as the production of the well or wells of any such person, firm or corporation, bears to the total production of such common source

of supply. The Corporation Commission is authorized to so regulate the taking of crude oil or petroleum from any or all such common sources of supply, within the State of Oklahoma, as to prevent the inequitable or unfair taking, from a common source of supply, of such crude oil or petroleum, by any person, firm, or corporation, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another.

Wells Gauged—Governor to Consent.

SECTION 5. That for the purpose of determining such production, a gauge of each well shall be taken under rules and regulations to be prescribed by the Corporation Commission, and said Commission is authorized and directed to make and promulgate, by proper order, such other rules and regulations, and to employ or appoint such agents with the consent of the Governor, as may be necessary to enforce this act.

Enforcement of Act—Hearings Before Corporation Commission.

SECTION 6. That any person, firm or corporation, or the Attorney General on behalf of the State, may institute proceedings before the Corporation Commission, or apply for a hearing before said Commission, upon any question relating to the enforcement of this act, and jurisdiction is hereby conferred upon said Commission to hear and determine the same. Said Commission shall set a time and place, when and where such hearing shall be had and give reasonable notice thereof to all persons or classes interested therein, by publication in some newspaper or newspapers, having general circulation in the State, and in addition thereto, shall cause reasonable notice in writing to be

served personally on any person, firm or corporation complained against. In the exercise and enforcement of such jurisdiction, said Commission is authorized to determine any question or fact, arising hereunder, and to summon witnesses, make ancillary orders, and use mesne and final process, including inspection and punishment as for contempt, analogous to proceedings under its control over public service corporations, as now provided by law.

Appeals to Supreme Court—Effect on Orders.

SECTION 7. That appellate jurisdiction is hereby conferred upon the Supreme Court in this State to review the action of said Commission in making any order, or orders, under this act. Such appeal may be taken by any person, firm or corporation, shown by the record to be interested therein, in the same manner and time as appeals are allowed by law from other orders of the Corporation Commission. Said orders so appealed from shall not be superseded by the mere fact of such appeal being taken, but shall be and remain in full force and effect until legally suspended or set aside by the Supreme Court.

Penalty for Violation.

SECTION 8. That in addition to any penalty that may be imposed by the Corporation Commission for contempt, any person, firm or corporation, or any officer, agent or employee thereof, directly or indirectly violating the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof, in a court of competent jurisdiction, shall be punished by a fine in any sum not to exceed five thousand dollars ($5,000.00), or by imprisonment in the county jail not to exceed thirty (30) days, or by both fine and imprisonment.

State May Secure Receiver—Extent and Manner.

SECTION 9. That in addition to any penalty imposed under the preceding section, any person, firm or corporation, violating the provisions of this act, shall be subject to have his or its producing property placed in the hands of a receiver by a court of competent jurisdiction, at the suit of the State through the Attorney General or any county attorney, but such receivership shall only extend to the operating of producing wells and the marketing of the production thereof, under the provisions of this act.

Validity of Relative Sections of Act.

SECTION 10. That the invalidity of any section, subdivision, clause or sentence of this act shall not in any manner affect the validity of the remaining portion thereof.

Emergency.

SECTION 11. For the preservation of the public peace, health and safety, an emergency is hereby declared to exist by reason whereof this act shall take effect and be in force from and after its passage and approval.

Approved February 11, 1915.

CORRECTED COPY

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CHARLES ELMORE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931

No. 485

CHAMPLIN REFINING COMPANY, APPELLANT,

vs.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA ET AL.

STATEMENT OF JURISDICTION.

HORACE G. McKEEVER,
HARRY O. GLASSER,
EDGAR A. DE MEULES,
GEO. S. RAMSEY,
Counsel for Appellant.

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Pacific Tel. & Tel. Co. v. Kuykendall, 265 U. S. 200	8
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Shawnee Gas & Electric Co. v. State, 31 Okla. 505	7
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United States v. Cohen Grocery Co., 255 U. S. 89	6
Williams v. Standard Oil Co., 278 U. S. 235	6
West v. Kansas Natural Gas Co., 221 U. S. 229	7

STATUTES CITED.

Constitution of the United States, 14th Amendment, and Sec. 8 of Article 1	2, 3
Judicial Code, Sec. 266 (U. S. C., 380)	4, 5
Oklahoma Compiled Statutes, 1921, Sec. 3498	3
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7957	3, 9, 10, 11
7958	3, 9, 11
7959	3, 9, 11, 12
7960	3, 9, 12
7961	3, 9, 12
7962	3, 9, 12, 13
7963	3, 9, 13

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931

No. 485

CHAMPLIN REFINING COMPANY, A CORPORATION, APPELLANT,

vs.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA AND E. R. HUGHES, C. C. CHILDERS AND PAUL WALKER, COMPOSING THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL., APPELLEES.

APPELLANT'S STATEMENT DISCLOSING THE BASIS ON WHICH IT CONTENDS THIS COURT HAS JURISDICTION TO REVIEW ON APPEAL THE DECREE OF THE COURT BELOW (SECTION 1 OF THIS COURT'S RULE 12).

The appellant, in support of the jurisdiction of this Court to review on appeal the decree below, respectfully states:

First.

Appellant, as plaintiff below, commenced this action in the United States Court for the Western District of Oklahoma to enjoin the enforcement of (*a*) the Oklahoma Oil Curtailment Act, which in substance undertakes to vest the Corporation Commission of that State "with power to investigate and determine from time to time the actual value of such crude oil or petroleum by standards herein provided," upon determination of which by the Corporation Commission "the taking of crude oil or petroleum from any oil-bearing sand or sands in the State of Oklahoma at a time when there is not a market demand therefor at the well at a price equivalent to the actual value of such crude oil or petroleum" is prohibited, which in effect vests the Corporation Commission with power to determine the price at which a producer of crude oil in Oklahoma must sell his oil upon production, and (*b*) to enjoin the Corporation Commission of Oklahoma from making or enforcing various rules, regulations and "Proration Orders" made by it, prohibiting the appellant from taking from its oil wells, and others similarly situated from taking from their oil wells, more than a small percentage of the capacity of the oil production thereof, on the ground that said Curtailment Act within itself, and the rules, regulations and orders of the Corporation Commission complained of, whether independent thereof or dependent thereon, violate the provisions of the Fourteenth Amendment to the Constitution of the United States in that they and each of them deprive appellant of (1) its liberty

of contract, (2) its property without due process of law, and (3) the equal protection of the laws, and are violative of the provisions of the commerce clause of Section 8 of Article I of the Constitution of the United States, and when put in operation as here enforced are in violation of the Sherman Anti-Trust Act of the United States. (See appellant's Third Amended and Supplemental Bill of Complaint. Certified unprinted record on file with Clerk, Vol. I, pp. 15 to 47, inc.)

NOTE.—The record in this cause (No. 485, Oct. Term 1931) has not been and will not be printed to completion within thirty days after the 26th day of October, 1931, the date same was filed with the Clerk of this Court, which makes it necessary throughout this Statement of Jurisdiction in the citation of parts thereof, to use the page numbers of the certified unprinted record, as on file in this Court.

The pertinent sections of the Curtailment Act, as contained in Sections 7954 to 7963, inclusive, Oklahoma Compiled Statutes, 1921 (same being Sections 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 of the Act approved February 11, 1915), are fully set forth in Appendix "A" hereto.

For a more definite statement of the constitutional questions raised by the pleadings and the record, reference is here made to *"Appellant's Definite Statement of the Points upon Which It Relies"* for a reversal of this case, set forth in Appendix "B" hereto.

Section 3498, Oklahoma Compiled Statutes, 1921, provides that "Any corporation, person or firm may

be fined by the Corporation Commission such sum, not exceeding five hundred dollars, as the Commission may deem proper, for the violation of any of its rules or requirements; and each day's continuance of such violation, after due service upon such corporation, person or firm of the order or requirement of the Commission, shall be a separate offense."

Second.

On January 2, 1931, appellant's application for a temporary injunction was heard before a three-judge court organized under the provisions of Section 266 of the Judicial Code as amended (U. S. C. 380), and denied on the 9th day of February, 1931, in an opinion with two judges concurring and one dissenting (Rec. Print No. 122, Oct. Term, 1931, Vol. I, p. 172).

Third.

From that order an appeal was petitioned (Rec., Print No. 122, Oct. Term, 1931, p. 336) and allowed (Rec., Print No. 122, Oct. Term, 1931, p. 341) to this Court on April 22nd, 1931, and docketed here as No. 122, October Term, 1931.

Fourth.

Jurisdiction of that appeal was sustained by this Court on October 19th, 1931.

Fifth.

The trial of the appellant's cause upon final hearing upon the merits, before three judges, was had on June

29th, 1931 (Rec., Vol. I, p. 410), and June 30th, 1931 (Rec., Vol. I, p. 460), and finally argued and submitted on August 5, 1931 (Rec., Vol. I, p. 342).

Sixth.

On September 1, 1931 (Rec., Vol. I, p. 308), the majority revised opinion of said court, and on October 17, 1931 (Rec., Vol. I, p. 309), the dissenting revised opinion, were respectively filed in said cause.

Seventh.

On September 11, 1931, the findings of fact (Rec., Vol. I, p. 236), conclusions of law (Rec., Vol. I, p. 285), and final decree (Rec., Vol. I, p. 342) of the three-judge court, were filed.

Eighth.

On September 23, 1931, the appellant's petition for appeal was filed (Rec., Vol. I, p. 561) and on October 17, 1931, order allowing same was entered (Rec., Vol. I, p. 576), bond given (Rec., Vol. I, p. 577, omitted in printing), appeal perfected, and the record lodged in this Court on October 26, 1931.

Ninth.

Under Section 266 of the Judicial Code, amended (U. S. C. 380), "an appeal may be taken direct to" this Court from a final decree denying an application for permanent injunction, in a case of this character, to-wit, an action to enjoin the enforcement, operation and execution of a State statute and rules of the State Commission.

Tenth:

That it is unnecessary to cite decisions of this Court upholding its jurisdiction in this case, as Section 266 of the Judicial Code plainly does so, but in order to show that the appeal is not frivolous we refer to the fact that one of the judges dissented; that Section 2 of the Act (Section 7955, Oklahoma Compiled Statutes 1921) is a price-fixing section and void upon the authority of *Williams* v. *Standard Oil Company,* 278 U. S. 235, 73 Law Ed. 287; that Section 2 of the Act is not a separable part thereof and the Act, as a result thereof, must fall as a whole, but that if Section 2 is separable, the remaining sections of said Act are too vague and uncertain to constitute due process of law within the meaning of the Fourteenth Amendment to the Constitution of the United States in that the statute does not define or prescribe any standard by which the Corporation Commission could define *economic* waste, *underground* waste, and waste incident to the production of crude oil or petroleum in excess of transportation or *marketing facilities* or *reasonable market demand* (*Connally* v. *General Construction Co.,* 269 U. S. 385; *Cline* v. *Frink Dairy Co.,* 274 U. S. 445; *International Harvester Co.* v. *Kentucky,* 234 U. S. 216; *United States* v. *Cohen Grocery Co.,* 255 U. S. 89); that the production and refining of crude oil is not a public or quasi-public business (*Tyson & Bro.* v. *Banton,* 273 U. S. 418; *Charles Wolf Packing Co.* v. *Court of Industrial Relations,* 262 U. S. 522); that appellant is a producer, refiner and marketer of crude oil and its products, and controls ample transportation

facilities for use in interstate as well as intrastate commerce.

Eleventh.

Appellant not having wasted oil or caused the actual waste of oil, its right to produce the natural flow of oil from its wells is protected by the Fourteenth Amendment to the Constitution of the United States, or, as said by this Court in *West* v. *Kansas Natural Gas Company*, 221 U. S. 229, "The surface owners of the soil, owners of the gas as well, could not be deprived of the right to reduce it to possession without the taking of private property". See *Pennsylvania Coal Co.* v. *Mahon*, 260 U. S. 393; *Ohio Oil Company* v. *Indiana*, 177 U. S. 209, and *Peterson* v. *Grayce Oil Co.*, 37 S. W. (2d) 367 (Tex.).

Twelfth.

The Corporation Commission, in making the rules, regulations and proration orders complained of, acted in a legislative and administrative capacity, and although an appeal is allowed by the Curtailment Act to the State Supreme Court, that court cannot exercise legislative powers (*In re County Commissioners*, 22 Okla. 435, 5th paragraph of the syllabus by the court: *Atchison, Topeka and Santa Fe Railway Co.* v. *State*, 28 Okla. 797; *St. Louis and San Francisco Ry. Co.* v. *State*, 28 Okla. 802; *Shawnee Gas & Electric Co.* v. *State*, 31 Okla. 505). The appellant had the right to invoke the jurisdiction of some court to test the validity of the Curtailment Act and the Corporation Commission's rules, regulations and proration orders thereunder and in exercising that right had the privi-

lege to elect to go into the United States Court without first appealing to the State Supreme Court. The case falls completely within the rule announced in *Bacon* v. *Rutland R. Co.*, 232 U. S. 134; *Prentis* v. *Atlantic Coast Line Co.*, 211 U. S. 210; *Pacific Tel. & Tel. Co.* v. *Kuykendall*, 265 U. S. 200; *Pacific Tel. & Tel. Co.* v. *Cushman*, 292 Fed. 930, and *Oklahoma Natural Gas Co.* v. *Russell*, 261 U. S. 290.

We respectfully submit that this Court has jurisdiction.

HORACE G. McKEEVER,
HARRY O. GLASSER,
EDGAR A. DE MEULES,
GEO. S. RAMSEY,
Counsel for Appellant.

This 19th day of November, 1931, receipt of a copy of appellant's statement disclosing the basis on which it contends this Court has jurisdiction to review on appeal the decree of the court below (Section 1 of this Court's rule 12) is hereby acknowledged.

J. BERRY KING,
Attorney General of the State of Oklahoma;
JESSE L. BALLARD,
Asst. Atty.-Gen.;
E. S. RATLIFF,
J. H. MILEY,
W. P. Z. GEIMON,
Associate Counsel for Appellees.
CHAS. WEST,
Counsel for the Governor of the State of Oklahoma.

APPENDIX "A."

House Bill No. 168, Chapter 38, Session Laws Oklahoma, 1915, Page 28.

Sections 7954 *to* 7963, *Inclusive, Oklahoma Compiled Statutes,* 1921.

An act defining and prohibiting the waste of crude oil or petroleum, providing for the equitable taking of the same from the ground, and conferring authority on the Corporation Commission prescribing the penalty for the violation of this Act, and declaring an emergency.

Be it enacted by the people of the State of Oklahoma:

Waste Prohibited.

SECTION 1. That the production of crude oil or petroleum in the State of Oklahoma, in such manner and under such conditions as to constitute waste, is hereby prohibited.

Production and Sale Regulated—Corporation Commission.

SECTION 2. That the taking of crude oil or petroleum from any oil-bearing sand or sands in the State of Oklahoma at a time when there is not a market demand therefor at the well at a price equivalent to the actual value of such crude oil or petroleum is hereby prohibited, and the actual value of such crude oil or petroleum at any time shall be the average value as near as may be ascertained in the United States at retail of the by-products of such crude oil or petroleum when refined less the cost and a reasonable profit in the business of transporting, refining and market-

ing the same, and the Corporation Commission of this State is hereby invested with the authority and power to investigate and determine from time to time the actual value of such crude oil or petroleum by the standard herein provided, and when so determined said Commission shall promulgate its findings by its orders duly made and recorded, and publish the same in some newspaper of general circulation in the State.

Waste Defined—Protection.

SECTION 3. That the term "waste" as used herein, in addition to its ordinary meaning, shall include economic waste, underground waste, surface waste and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands. The Corporation Commission shall have authority to make rules and regulations for the prevention of such wastes, and for the protection of all fresh water strata, and oil and gas bearing strata, encountered in any well drilled for oil.

Production Regulated—Discrimination of Purchaser Prohibited.

SECTION 4. That whenever the full production from any common source of supply of crude oil or petroleum in this State can only be obtained under conditions constituting waste, as herein defined, then any person, firm or corporation, having the right to drill into and produce oil from any such common source of supply may take therefrom only such proportion of all crude oil and petroleum that may be produced therefrom, without waste, as the production of the well or wells of any such person, firm or corporation, bears to the total production of such common source of supply. The Corporation Commission is authorized to so regulate the taking of crude oil or petroleum from any or all such common sources of supply,

within the State of Oklahoma, as to prevent the inequitable or unfair taking, from a common source of supply, of such crude oil or petroleum, by any person, firm, or corporation, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another.

Wells Gauged—Governor to Consent.

SECTION 5. That for the purpose of determining such production, a gauge of each well shall be taken under rules and regulations to be prescribed by the Corporation Commission, and said Commission is authorized and directed to make and promulgate, by proper order, such other rules and regulations, and to employ or appoint such agents with the consent of the Governor, as may be necessary to enforce this act.

Enforcement of Act—Hearings Before Corporation Commission.

SECTION 6. That any person, firm or corporation, or the Attorney General on behalf of the State, may institute proceedings before the Corporation Commission or apply for a hearing before said Commission, upon any question relating to the enforcement of this act, and jurisdiction is hereby conferred upon said Commission to hear and determine the same. Said Commission shall set a time and place, when and where such hearing shall be had and give reasonable notice thereof to all persons or classes interested therein, by publication in some newspaper or newspapers, having general circulation in the State, and in addition thereto, shall cause reasonable notice in writing to be served personally on any person, firm or corporation complained against. In the exercise and enforcement of such jurisdiction, said Commission is authorized to determine any question or fact, arising hereunder, and to summon witnesses, make ancillary orders, and use mesne and final process, including in-

spection and punishment for contempt, analogous to proceedings under its control over public service corporations, as now provided by law.

Appeals to Supreme Court—Effect on Orders.

SECTION 7. That appellate jurisdiction is hereby conferred upon the Supreme Court in this State to review the action of said Commission in making any order, or orders, under this act. Such appeal may be taken by any person, firm or corporation, shown by the record to be interested therein, in the same manner and time as appeals are allowed by law from other orders of the Corporation Commission. Said orders so appealed from shall not be superseded by the mere fact of such appeal being taken, but shall be and remain in full force and effect until legally suspended or set aside by the Supreme Court.

Penalty for Violation.

SECTION 8. That in addition to any penalty that may be imposed by the Corporation Commission for contempt, any person, firm or corporation, or any officer, agent or employee thereof, directly or indirectly violating the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof, in a court of competent jurisdiction, shall be punished by a fine in any sum not to exceed five thousand dollars ($5,000.00), or by imprisonment in the county jail not to exceed thirty (30) days, or by both fine and imprisonment.

State May Secure Receiver—Extent and Manner.

SECTION 9. That in addition to any penalty imposed under the preceding section, any person, firm or corporation, violating the provisions of this act, shall be subject to have his or its producing property placed in the hands of a receiver by a court of competent

jurisdiction, at the suit of the State through the Attorney General or any county attorney, but such receivership shall only extend to the operating of producing wells and the marketing of the production thereof, under the provisions of this act.

Validity of Relative Sections of Act.

SECTION 10. That the invalidity of any section, subdivision, clause or sentence of this act shall not in any manner affect the validity of the remaining portion thereof.

Emergency.

SECTION 11. For the preservation of the public peace, health and safety, an emergency is hereby declared to exist by reason whereof this act shall take effect and be in force from and after its passage and approval.

Approved February 11, 1915.

APPENDIX B.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931.

No. 485.

CHAMPLIN REFINING COMPANY, *Appellant,*

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA ET AL., *Appellees.*

Appellant's Definite Statement of Points Upon Which it Relies, Submitted in Accordance With Section 9 of This Court's Rule 13.

Appellant relies upon the following points:

First: The Oklahoma Corporation Commission's rules, regulations and proration orders (hereinafter

referred to as orders) attached to appellant's Third Amended and Supplemental Bill and contained in Plaintiff's Exhibit 33, being legislative in their nature and made by an instrumentality of the state, are state laws within the meaning of the Constitution of the United States, and although an appeal therefrom is allowed to the Oklahoma Supreme Court by the Legislative Act involved in this case, nevertheless, as that court is without legislative power and can not be vested with such power by the Legislature, the appellant had the right to invoke the jurisdiction of the United States District Court to enjoin the enforcement of said orders without appealing first therefrom to the State Supreme Court.

Second. The prohibitions of the Fourteenth Amendment to the Constitution of the United States are addressed to individuals acting as officers and agents of the State and as such may be enjoined by the Federal Court from using the power of their office to deny to any person the rights guaranteed by the Fourteenth Amendment to the National Constitution.

Third. The said orders of the Corporation Commission of the State of Oklahoma (hereinafter called Commission) being legislative in their nature, are laws within the meaning of the Constitution of the United States and the Acts of Congress regulating Federal Court jurisdiction.

Fourth. Section 2 of the Act of the Oklahoma Legislature approved February 11th, 1915 (1915 Session Laws, 28, being Sections 7954 to 7963, inclusive, Oklahoma Compiled Statutes, 1921), hereinafter referred to as the Curtailment Act, undertakes to authorize the Commission to fix the price of crude oil produced in Oklahoma and is therefore void in that it is in violation of the Fourteenth Amendment to the Constitution of the United States.

Fifth. Section 2 of the Curtailment Act is not a separable part thereof and therefore the whole act must fall as in violation of the Fourteenth Amendment to the Constitution of the United States.

Sixth. If Section 2 of the said Act is separable and unconstitutional, then the meaning of Section 3 and/or Section 4 thereof must be gathered from Section 2 within the rule that an unconstitutional part of a law may be considered in ascertaining the intent of the Legislature in the remaining parts of the law, and by the application of this rule it is clear that the Curtailment Act is a price-fixing statute attempting to authorize the Commission to regulate and control prices to be paid and received for crude oil in the carrying on of a private business.

Seventh. If Section 2 of the Curtailment Act is separable and the remaining sections, or parts thereof, may be considered as independent of Section 2, then the Act, without Section 2, is too vague and uncertain to meet the requirements of due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

Eighth. Without Section 2 of the Curtailment Act the remaining sections (particularly 3 and 4) are too vague, uncertain and indefinite to authorize the Commission to make the orders shown by Plaintiff's Exhibit 33 in so far as said orders go beyond the prevention of physical waste.

Ninth. Appellant's ownership of lands in fee and/or oil leaseholds thereon with the attendant production of crude oil therefrom and the manufacture of gasoline and other refined products from crude oil produced by it, is not a public or quasi public business subject to such regulations as the Curtailment Act imposes.

Tenth. The Curtailment Act is in violation of the Fourteenth Amendment to the Constitution of the United States in that it denies the appellant the liberty of contract as defined by this Court in *Allgeyer* v. *State of Louisiana,* 165 U. S. 578, and other decisions.

Eleventh. The aforesaid orders of the Commission restrict and burden interstate commerce in violation of the Commerce Clause of Section 8 of Article I of the Constitution of the United States.

Twelfth. The Commission, in making each of the orders complained of, exceeded the powers conferred or attempted to be conferred upon it by the said Curtailment Act.

Thirteenth. The appellant's right to drill and take the natural flow of crude oil from its lands and/or oil leaseholds and thereafter devote the same to a useful purpose without physical waste is a vested property right protected by the Fourteenth Amendment to the Constitution of the United States and not subject to restraint or suppression by Act of the State Legislature or orders of the Commission.

Fourteenth. The Commission's rules complained of are unreasonably discriminatory against appellant and other producers of crude oil in what is known in the record as the Oklahoma City Oil Field in that they, without any reasonable basis therefor, restrict the production of crude oil in the Oklahoma City Field to a much less percentage of the potential capacity of the wells than allowed by the rules to be produced in the Seminole Oil Field and other oil fields in Oklahoma, and are therefore in conflict with the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

Fifteenth. Assuming the Curtailment Act is valid, nevertheless it has been and is being construed and

administered by the Commission in such a manner as to make its operation a taking of appellant's property without that due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

Sixteenth. Without Section 5 of the Curtailment Act requiring the Commission to gauge or cause to be gauged each oil well (sought to be prorated) for the purpose of determining its production, the provisions of Section 4 of the Act would be unconstitutional in that that section vests in the Commission unlimited and unrestrained arbitrary power and discretion over appellant's property and others similarly situated, (*a*) in violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States, (*b*) deprives the appellant of its liberty of contract, and (*c*) equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

Seventeenth. The gauge of each producing well in the Oklahoma City Oil Field as well as in the other prorated oil fields in Oklahoma required by Section 5 of the Curtailment Act was a condition precedent to the Commission's authority to make any order or orders specifying the volume of crude oil each well shall be permitted to produce.

Eighteenth. A legal gauge of the wells in the Oklahoma City Field, Seminole and/or other prorated oil fields in Oklahoma has not been made by the Commission or under its orders and directions and without such gauge the Commission was powerless to exercise the authority attempted to be conferred upon it by Sections 3 and 4 of the Curtailment Act.

Nineteenth. The Curtailment Act is not self-executing and the State Legislature having made no appro-

priations at any time for the payment of the expenses of gauging the wells and the salaries of agents of the Commission, all gauges of wells are illegal and void and the Commission's rules are ineffectual.

Twentieth. Gauges made in accordance with the Commission's orders permitting the operator to gauge his own wells in the presence of a representative of an adjoining operator, although agreed to by the majority of the Operators' Committee and Umpire, are void in that private and non-official parties were permitted to determine the basis (potential production) for the proration of markets and the allowable production from the entire field in which all operators, including appellant, are interested and materially affected.

Twenty-first. The Legislature is without power to delegate authority to the Commission to create the office of Umpire and prescribe the qualifications therefor and duties thereof and allow payment of the Umpires' salaries by the beneficiaries of the acts of the Umpires, and if Section 5 of the Act is construed to vest that authority in the Commission it is void under Section 1 of Article 4 and Section 1 of Article 5 of the Constitution of the State of Oklahoma.

Twenty-second. The Commission is without authority to delegate to Umpires any jurisdiction of a discretionary nature and all orders designed to vest any such powers in Umpires are void.

Twenty-third. The payment of salaries of Umpires by the Operators' Committee (a non-official organization), collected by said Committee from persons, firms and corporations engaged in the production of crude oil in Oklahoma, and/or the operation of pipe lines and/or refineries within Oklahoma, is against public policy and vitiates all gauges of the wells and so far contaminates the Commission's orders as to render

them unenforceable in so far as they undertake to restrain the production of crude oil in Oklahoma without actual waste.

Twenty-fourth. Under Section 1 of Article 15 of the Oklahoma Constitution and Sections 126 and 1561 et al. of the Oklahoma Compiled Statutes, 1921, the taking and subscribing to an oath of office was a condition precedent to the umpires becoming *de facto* or *de jure* officers, and no such oath of office having been taken and subscribed by such umpires, their action in the premises was a misdemeanor and all their acts, including gauging the wells, are *ipso facto* void.

Twenty-fifth. Gauges made under the supervision of the umpires are illegal and void for the reason that the appointment and tenure of office of each umpire was and is against public policy.

Twenty-sixth. The appellant's petition for rehearing filed in the court below should have been granted as the evidence available thereon would have developed facts and events incident to military rule taking place after the decree of the court below was announced showing the Executive Department of the State Government construes the Curtailment Act as a price-fixing statute and enforces it as such.

Respectfully submitted,

HORACE G. McKEEVER,
HARRY O. GLASSER,
EDGAR A. DE MEULES,
GEO. S. RAMSEY,
Counsel for Appellant.

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No. 486

In the Supreme Court of the United States

October Term, 1931.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, *ET AL., Appellants,*

vs.

CHAMPLIN REFINING COMPANY, *Appellee.*

Appellants' Statement of Basis of Appellate Jurisdiction.

J. BERRY KING,
Attorney General of the State of Oklahoma;

JESS A. BALLARD,
Assistant Attorney General of the State of Oklahoma;

E. S. RATLIFF,
Attorney for the Corporation Commission;

JOHN H. MILEY,
W. P. Z. GERMAN,
Special Counsel,
Attorneys for Appellants.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1931.

No. 486

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, *ET AL., Appellants,*

vs.

CHAMPLIN REFINING COMPANY, *Appellee.*

APPELLANTS' STATEMENT OF BASIS OF APPELLATE JURISDICTION.

This is a cross appeal taken by the defendants below from that portion of the final decree of the court below entered September 11, 1931, which adjudged invalid and permanently enjoined the enforcement by appellants, defendants below, of sections 8 and 9, the so-called penal provisions, of the Oklahoma Oil Conservation Act. The decree sustained the validity of other provisions of the Act and orders of the Oklahoma Corporation Commission made pursuant thereto, and refused to enjoin their enforcement (other than by proceedings under said sections 8 and 9), and the appellee herein appealed therefrom and its case is No. 485, October term, 1931. Appellants herein concede the

jurisdiction of the court on the appeal of appellee in case No. 485, and believe that, such jurisdiction existing, then for that reason alone jurisdiction of the case on cross appeal exists.

This court has jurisdiction to review on appeal the decree below by reason of the provisions of section 266 of the Judicial Code as amended (United States Code, Title 28, Sec. 380), which provides that a direct appeal to the Supreme Court may be taken from a final decree of a three-judge court granting or denying a permanent injunction in a suit instituted in a District Court of the United States seeking an interlocutory injunction suspending or restraining the enforcement, operation or execution of any statute of a state by restraining the action of any officer of such state in the enforcement or execution of such statute or in the enforcement or execution of an order made by an administrative board or commission acting under and pursuant to the statutes of such state upon the ground of the unconstitutionality of such statute.

The final decree sought to be reviewed was entered by the United States District Court for the Western District of Oklahoma, two circuit judges and one district judge sitting, on September 11, 1931 (R248)*, and the application for the appeal herein was presented on October 17, 1931 (R399).

The suit of the appellee, Champlin Refining Company, plaintiff below, in which said decree was entered, was instituted in said court on September 15, 1930, to obtain an interlocutory injunction and upon final hearing, a permanent injunction against appellants, defendants below, all officers of the State of Oklahoma, except defendant Lewis R. Mor-

* All Record references herein

ris, who is county attorney of Oklahoma County, Oklahoma, to restrain the enforcement, operation and execution by the defendants of a statute of the State of Oklahoma, namely, an act of the Legislature of Oklahoma approved February 11, 1915, commonly referred to as the Oil Conservation Act, entitled, "An act defining and prohibiting the waste of crude oil or petroleum, providing for the equitable taking of the same from the ground and conferring authority on the Corporation Commission, prescribing the penalty for the violation of this act, and declaring an emergency," a copy of which is attached to the majority opinion below (R218), and the enforcement and execution by appellants, defendants below, against the appellee, plaintiff below, of certain orders, rules and regulations issued and promulgated by the appellant Corporation Commission of Oklahoma acting by the appellants, the members of said Commission, under the authority granted to said Commission by certain of the provisions of said act. The principal ground upon which said injunctive relief was sought was that the said statute of the State of Oklahoma and said orders, rules and regulations were and are void, in that they violate to the injury of the appellee, the provisions of the Fourteenth Amendment to the Constitution of the United States, and the commerce clause of section 8, article I of said Constitution. Among other things, the appellee alleged and appellants admitted that appellee owns certain producing oil wells within certain common sources of supply of crude oil within said state, that the operation of said wells is affected by said statute and that the defendant Corporation Commission and its members had issued certain rules, regulations and orders pursuant to authority pretended to be vested in them in and by the provisions of said statute for

the enforcement thereof, and were enforcing the same against the appellee in the operation by appellee of its said oil wells. See plaintiff's third amended and supplemental bill of complaint (R.6.), and defendants' answer thereto (R37.).

The appellee caused its application for an interlocutory injunction to be heard before a three-judge court organized according to the provisions of said section 266 of the Judicial Code, as amended. Said application was denied on February 9, 1931 (R.3.).

Thereafter the appellee caused to be heard before a court of three judges organized as aforesaid, its application for a permanent injunction, and the court after hearing the evidence and making and filing its findings of fact (R. 177) and conclusions of law (R213), entered its final decree on September 11, 1931 (R248), denying said application in all respects except that it permanently enjoined the appellants J. Berry King, Attorney General of Oklahoma, and Lewis R. Morris, County Attorney of Oklahoma County, Oklahoma, their assistants and successors in office, from enforcing the provisions of sections 8 and 9 of said Act upon a holding that the provisions of said sections 8 and 9 are void in that they are limited to violations of provisions of said act and do not cover violations of orders, rules and regulations of the Corporation Commission issued pursuant to said act and that the other provisions of the act, namely, sections 1, 3, 4 and 5, under which the said orders, rules and regulations were issues are too vague, indefinite and uncertain to sustain criminal prosecutions under section 8 and receivership proceedings under section 9, and in effect, that the enforcement against appellee of sections 8 and 9 would be violative of the rights of appellee

under the provisions of the Fourteenth Amendment to the national constitution.

Thus after hearing and denying the application for an interlocutory injunction a three-judge court granted the above mentioned permanent injunction in a suit which is of the nature described in and covered by the provisions of section 266 of the Judicial Code as amended.

Cases sustaining the jurisdiction of the Supreme Court are cited as follows:

Stratton v. *St. L. S.-W. R. Co.*, No. 6, October term, 1930, not yet officially reported;
Louisville, etc., R. C. v. *Garrett*, 231 U. S. 298;
Clark v. *Poor*, 274 U. S. 554;
In re Buder, 271 U. S. 461;
Shaffer v. *Carter*, 252 U. S. 37;
Pacific Telephone, etc., Co. v. *Kuykendall*, 265 U. S. 196.

It is respectfully submitted that this court has jurisdiction.

J. Berry King,
Attorney General of the State of Oklahoma;

Jess A. Ballard,
Assistant Attorney General of the State of Oklahoma;

E. S. Ratliff,
Attorney for the Corporation Commission;

John H. Miley,
W. P. Z. German,
Special Counsel,
Attorneys for Appellants.

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DEC
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No. 485

In the Supreme Court of the United States

October Term, 1931.

CHAMPLIN REFINING COMPANY, A CORPORATION,
Appellant,

vs.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, AND E. R. HUGHES, C. C. CHILDERS, AND PAUL WALKER, COMPOSING THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, *ET AL.*,
Appellees.

MOTION TO ADVANCE ON CALENDAR.

CHAMPLIN REFINING COMPANY,
A CORPORATION,
Appellant.

By HARRY O. GLASSER,
H. G. McKEEVER,
GEO. S. RAMSEY,
EDGAR A. de MEULES,
Solicitors.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1931.

No. 485

CHAMPLIN REFINING COMPANY, A CORPORATION,
Appellant,

vs.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, AND E. R. HUGHES, C. C. CHILDERS, AND PAUL WALKER, COMPOSING THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, *ET AL.*,
Appellees.

MOTION to ADVANCE on CALENDAR.

Comes now the appellant, by its solicitors, and moves the court to advance this cause for hearing at the earliest time subsequent to Monday, January 18th, 1931, compatible with the other business of the court, and for grounds assigns:

That appellant instituted this cause in the United States District Court for the Western District of Oklahoma, for the purpose of permanently enjoining,

(a) the enforcement of the Oklahoma Oil Curtailment Act, entitled House Bill No. 168, chapter 38, Session Laws 1915, page 28, being sections 7954 to 7963, inclusive, Oklahoma Compiled Statutes, 1921 (R. Vol. 1, part 2, pp. 218-221, inclusive),

and, or,

(b) the making or enforcing of rules, regulations, or proration orders thereunder, for that said act within itself, and the rules, regulations and proration orders of the Corporation Commission complained of, whether independent thereof, or dependent thereon, are violative of the provisions of the Fourteenth Amendment to the Constitution of the United States, in that they and each of them deprive appellant of

(1) its liberty of contract,

(2) its property without due process of law,

and, or,

(3) the equal protection of the laws, and,

are violative of the provisions of the commerce clause of section 8, or Article I of the Constitution of the United States,

and,

when put in operation as here enforced, and complained of, are in violation of the Sherman Anti-Trust Act of the United States (see appellant's third amended and supplemental bill of complaint, R. Vol. 1, part 1, pp. 6-36, inclusive), consequently vesting in a statutory court, when created as provided in section 266 of the Judicial Code as amended (28 U. S. C. A. 380), jurisdiction for the purpose of determining such application for permanent injunction, with the consequent right of direct appeal to this court, within the provisions of Sec. 266 of the Judicial Code as amended *(supra)*, for the denial thereof.

That by the provisions of Judicial Code 266 *(supra)*, Congress intended that every possible precedence shall be given the final hearing upon a cause in which the unconsti-

tutionality of a state statute is alleged, and especially where, as here, by the imposition of military law by the Governor of the state, in a time of peace, as fully set forth in appellant's petition for rehearing (Folios 345 to 408, not reprinted in record), the properties of this appellant, and all others in like situation, have been made confiscate to such military power, notwithstanding all of the courts of the State of Oklahoma (state as well as federal), are open in the orderly conduct of the business before such courts.

That the printed record in said cause is now in the possession of counsel for the respective parties and the consequences of the continuation of so-called "proration," as practiced in Oklahoma, if unconstitutional, is without parallel in the irreparable injury that will be done this appellant, and all others in like situation, so that the ultimate rights of all concerned require that the matter should be finally determined with the greatest possible expediency.

That to so order the advancement of this cause, will be within the intent of the provisions of Judicial Code, section 266 *(supra)*.

Wherefore, appellant prays that this motion be granted.

CHAMPLIN REFINING COMPANY,
A CORPORATION,
Appellant,

By HARRY O. GLASSER,
H. G. MCKEEVER,
GEO. S. RAMSEY,
EDGAR A. DE MEULES,
Solicitors.

We, the undersigned, solicitors for the appellees, acknowledge the receipt of a copy of the foregoing motion, with written notice that the same will be presented to the Supreme Court for consideration, and action thereon, on Monday, December 14th, 1931, at 12:00 o'clock noon, or as soon thereafter as the court may conveniently hear same.

Dated at Oklahoma City, Oklahoma, this .... day of December, 1931.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, E. R. HUGHES, C. C. CHILDERS, AND PAUL WALKER, COMPOSING THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL.,

J. BERRY KING, Atty. Gen'l, *Appellees,*

By JESSE L. BALLARD, Assistant Atty. Gen'l,

E. S. RATLIFF,

W. P. Z. GERMAN,

J. H. MILEY,

Solicitors.

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CHARLES ELMORE CR
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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931

No. 485

CHAMPLIN REFINING COMPANY, APPELLANT,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA AND PAUL WALKER, E. R. HUGHES, AND C. C. CHILDERS, ETC., ET AL., APPELLEES.

No. 486

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA AND PAUL WALKER, E. R. HUGHES, AND C. C. CHILDERS, ETC., ET AL., APPELLANTS,

vs.

CHAMPLIN REFINING COMPANY, APPELLEE.

BRIEF FOR APPELLANT CHAMPLIN REFINING COMPANY.

JAMES M. BECK,
HARRY O. GLASSER,
GEO. S. RAMSEY,
HORACE G. McKEEVER,
EDGAR A. DEMEULES,
NATHAN SCARRITT,
Counsel for Appellant, Champlin Refining Company.

(36,299-36,300)

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931

No. 485

CHAMPLIN REFINING COMPANY, APPELLANT,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA AND PAUL WALKER, E. R. HUGHES, AND C. C. CHILDERS, ETC., ET AL., APPELLEES.

No. 486

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA AND PAUL WALKER, E. R. HUGHES, AND C. C. CHILDERS, ETC., ET AL., APPELLANTS,

vs.

CHAMPLIN REFINING COMPANY, APPELLEE.

BRIEF FOR APPELLANT CHAMPLIN REFINING COMPANY.

MAY IT PLEASE THE COURT:

(a) Opinion of Court Below.

51 Fed. (2d) 823. Also R., vol. 1, pt. 2, pp. 218-248, inc.

The cause having been submitted to a statutory court, decree was entered upon a division thereof. Circuit Judges Cotteral and Phillips upon the majority opinion of the Court (Rec., vol. I, part 2, p. 218). District Judge Kennamer dissenting (Rec., vol. I, part 2, p. 229).

(b) Statement Upon Which Jurisdiction of This Court is Invoked.

Heretofore printed in conformity with the Rule, and now on file in the office of the Clerk of this Court.

(c) Statement of the Case.

On September 15th, 1930 (R., vol. I, pt. 2, p. 177), appellant (hereinafter called plaintiff) commenced this suit in equity to restrain Fred Capshaw (then Chairman of the Commission), E. R. Hughes and C. C. Childers, composing the Oklahoma Corporation Commission, from enforcing an Act of the Legislature approved February 11th, 1915, hereinafter referred to as the CURTAILMENT ACT (Okla. Session Laws, 1915, p. 28), as follows:

> "AN ACT defining and prohibiting the waste of crude oil or petroleum, providing for the equitable taking of the same from the ground and conferring authority on the Corporation Commission, prescribing the penalty for the violation of this Act, and declaring an emergency.
>
> "Be It Enacted by the People of the State of Oklahoma:
>
> "Section 1. That the production of crude oil or petroleum in the State of Oklahoma, in such

manner and under such conditions as to constitute waste, is hereby prohibited.

"Section 2. That the *taking* of crude oil or petroleum from any oil-bearing sand or sands in the State of Oklahoma *at a time when there is not a market demand therefor at the well at a price equivalent to the actual value of such crude oil or petroleum is hereby prohibited,* and the actual value of such crude oil or petroleum at any time *shall be the average value* as near as may be ascertained in the United States at retail of the by-products of such crude oil or petroleum when refined less the cost and a reasonable profit in the business of transporting, refining and marketing the same, and the Corporation Commission of this State *is hereby* (in) sic *vested with the authority and power to investigate and determine from time to time the actual value of such crude oil or petroleum* by the standard herein provided, and *when so determined* said Commission shall promulgate its findings by its orders duly made and recorded, and publish the same in some newspaper of general circulation in the State.

"Section 3. That the term 'waste' as used herein, in addition to its ordinary meaning, shall include *economic waste, underground waste,* surface waste and *waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands.* The Corporation Commission shall have authority to make rules and regulations for the prevention of such *wastes,* and for the protection of all fresh water strata, and oil and gas bearing strata, encountered in any well drilled for oil.

"Section 4. That whenever the full production from any common source of supply of crude oil or petroleum in this state can only be obtained under *conditions constituting waste, as herein defined,* then any person, firm or corporation, having the right to drill into and produce oil from any such common source of supply, may take therefrom only such proportion of all crude oil and petroleum that may be produced therefrom, *without waste,* as the production of the well or wells of any such person, firm or corporation, bears to the total production of such common source of supply. The Corporation Commission is authorized to so regulate the taking of crude oil or petroleum from any or all such common sources of supply, within the State of Oklahoma, as to prevent the inequitable or unfair taking, from a common source of supply, of such crude oil or petroleum, by any person, firm or corporation, *and to prevent unreasonable discrimination in favor of any one such common source of supply as against another.*

"Section 5. *That for the purpose of determining such production, a gauge* of each well SHALL BE TAKEN under rules and regulations to be prescribed by the Corporation Commission, and said Commission is authorized and directed to make and promulgate, by proper order, such other rules and regulations, *and to employ or appoint such agents with the consent of the Governor, as may be necessary to enforce this act.*

"SECTION 6. That any person, firm or corporation, or the Attorney General on behalf of the State, may institute proceedings before the

Corporation Commission, or apply for a hearing before said Commission, upon any question relating to the enforcement of this act, and jurisdiction is hereby conferred upon said Commission to hear and determine the same. Said Commission shall set a time and place, when and where such hearing shall be had and give reasonable notice thereof to all persons or classes interested therein, by publication in some newspaper or newspapers, having general circulation in the State, and in addition thereto, shall cause reasonable notice in writing to be served personally on any person, firm or corporation complained against. In the exercise and enforcement of such jurisdiction, said Commission is authorized to determine any question of fact, arising hereunder, and to summon witnesses, make ancillary orders, and use *mesne* and final process, including inspection and punishment as for contempt, analogous to proceedings under its control over public service corporations, as now provided by law.

"SECTION 7. That appellate jurisdiction is hereby conferred upon the Supreme Court in this State to review the action of said Commission in making any order, or orders, under this act. Such appeal may be taken by any person, firm or corporation shown by the record to be interested therein, in the same manner and time as appeals are allowed by law from other orders of the Corporation Commission. Said orders so appealed from shall not be superseded by the mere fact of such appeal being taken, but shall be and remain in full force and effect until legally suspended or set aside by the Supreme Court.

"SECTION 8. That in addition to any penalty that may be imposed by the Corporation Commission for contempt, any person, firm or corporation, or any officer, agent or employee thereof, directly or indirectly *violating the provisions of this act,* shall be guilty of a misdemeanor, and upon conviction thereof, in a court of competent jurisdiction, shall be punished by a fine in any sum not to exceed five thousand dollars ($5,000.00), or by imprisonment in the county jail not to exceed thirty (30) days, or by both fine and imprisonment.

"SECTION 9. That in addition to any penalty imposed under the preceding section, any person, firm or corporation, violating the *provisions of this act,* shall be subject to have his or its producing property placed in the hands of a receiver by a court of competent jurisdiction, at the suit of the State through the Attorney General or any county attorney, but such receivership shall only extend to the operating of producing wells and the marketing of the production thereof, under the provisions of this act.

"SECTION 10. That the invalidity of any section, subdivision, clause or sentence of this act shall not in any manner (e)ffect sic the validity of the remaining portion thereof.

"SECTION 11. For the preservation of the public peace, health and safety, an emergency is hereby declared to exist by reason whereof this act shall take effect and be in force from and after its passage and approval." (Italics ours.)

Approved February 11, 1915.

The Oklahoma Legislature has never appropriated any funds for the enforcement of this Act.

In 1927, when overproduction in the oil industry was threatening price level and structure, certain powerful oil producing interests (competitors of the plaintiff company) secured the appointment by the Commission of a production Umpire (privately paid and advised) to prorate the *market*, and determine *potentials* incident thereto, as will be more fully hereinafter set forth.

The Umpire so named has never complied (Rec., vol. I, part 2, p. 285) with the Statutes of Oklahoma requiring its public officer to take an oath of office and has at all times acted in violation of its Statutes, which prohibit any public officer from accepting any compensation from any outside agency or source.

The salary ($24,000 per annum), paid such Umpire by the interested oil producers is more than twice the combined salaries of the three elected members of the Commission, and the findings of the Umpire (and operators' committee) as to market demand, potential capacity of wells and fields, methods of proration, together with the discrimination resulting therefrom, have been fully accepted by the Commission without question in every instance.

Plaintiff is now engaged in the business of producing, refining, transporting and marketing petroleum and its refined by-products in intrastate and interstate commerce. It owns and operates an oil refinery at Enid, Oklahoma, with a capacity of 15,000 barrels of crude oil per day, in which it has an investment of $3,840,038.31. At said plant it manufactures

gasoline, kerosene, lubricating oils, waxes and other by-products of different grades. It owns approximately 735 tank cars of the value of $1,295,202.21, which it uses in the distribution of its refined products, among its customers in some seventeen states. Plaintiff controls and operates approximately 470 miles of pipe lines, representing an investment of $3,146,228.48, and owns and operates a pipe line for the transportation of crude oil from the Oklahoma City oil fields to its Enid refinery, having a carrying capacity of 18,000 barrels of crude oil per day and costing approximately $600,000.00. It owns and operates approximately 263 retail gasoline filling stations and 256 wholesale gasoline stations in several States, its investment in filling stations and marketing equipment, situated in Oklahoma being $1,738,731.40, and that outside of Oklahoma, $1,357,950.48.

The Trial Court found (Rec., vol. I, part 2, pp. 179-182, inc.) that:

> "During the period from July 1st, 1928, to May 31, 1931, 65% by volume, and 70% in value, of the products of its Enid Refinery were transported from its refinery in Oklahoma to other states and sold therein.
>
> "In addition to oil produced from its own wells, plaintiff purchased 4,660,000 barrels of crude oil in 1930 and 4,821,000 barrels in 1929 from other producers for use at its Enid refinery. Its purchases so far during 1931 have been less than in previous years."
>
> • • • • • • •
>
> "Plaintiff has drilled and completed nine producing oil wells on its leases in the Oklahoma

City Field, at an approximate cost of $1,250,000.00 and is now drilling one additional well thereon which will cost approximately $140,000.00.

"Plaintiff has drilled and equipped nine oil producing wells on its leases in the Greater Seminole Field, at an approximate cost of $569,000.00 * * *."

* * * * * * * * *

"The plaintiff has pipe line facilities for transporting 18,000 barrels of oil per day from its wells in the Oklahoma City field to its Enid refinery, and adequate pipe line facilities for transporting the oil from its wells in the Greater Seminole field to its said refinery. It has gas tight, steel storage tanks at its refinery, with a capacity of 55,000 to 80,000 barrels each and a total capacity of 645,000 barrels. It has a market for its refined products. *It has stored no crude oil in earthen storage and permitted none of that produced from its wells to run at large on the surface of the earth, and has not wasted any oil produced from its wells; and all the oil it can produce will be utilized for commercial purposes.* There was no evidence that closing in or pinching in its wells in the Oklahoma City field will cause water to enter the oil and gas sand, or damage its wells, or result in waste of oil or gas."

The plaintiff seeks to enjoin the Commission from enforcing its rules and regulations made under the authority of the Act suppressing and restraining the production of crude oil from certain lands and leases in the Oklahoma Oil fields, by the plaintiff and others similarly situated, to a predetermined market outlet, and challenges the constitutionality of the Act in that same is—

(1) In violation of the 14th Amendment to the National Constitution in that it deprives plaintiff of (a) its property without due process of law, (b) the equal protection of the laws, (c) its liberty of contract, and—

(2) Is a burden upon interstate commerce in violation of Clause 3, Section 8 of Article I of the National Constitution,

and challenges the constitutionality of the rules and regulations, in that if the Act within itself is not in violation of the National Constitution, then the Commission exceeded its authority in making and attempting to enforce its orders and regulations and has been and now is attempting to enforce said Act in an unconstitutional manner, in that its orders and regulations made under the purported authority of the Act operate to deprive plaintiff of (a) its property without due process of law, (b) equal protection of the laws, (c) liberty of contract, (d) constitute an unwarranted interference with and burden upon interstate commerce in violation of Clause 3, Section 8, of Article I of the National Constitution, and (e) violate the Anti-Trust Laws of the United States.

The plaintiff for its statement of the facts, says that from the time of the approval of said Act until in October, 1926, the State of Oklahoma was producing crude oil in great quantities, upon a satisfactory market demand, and as a result of exploration there had been opened for development a number of great producing fields within the State, the principal of which was the *Greater Seminole*. Production within that area at that time had reached such proportion that "proration of production to market outlet" (by agreement of the operators) was put into effect (R., vol. I, pt. 2, pp. 279-280).

That, E. B. Reeser (until recently President of the American Petroleum Institute), of the Barnsdall Corporation (R., vol. I, pt. 2, p. 284), along with Dan Kelsey (of the Prairie Oil & Gas Company), first approached Ray Collins during October, 1926, in the interest of the producers in the Seminole area for the purpose of securing the services of Collins as (an unofficial) production Umpire (R., vol. I, pt. 2, p. 279).

A meeting of producers in the Seminole area was at that time held in this connection in the headquarters of the Mid-Continent Oil & Gas Association at Tulsa, Oklahoma (R., vol. I, pt. 2, p. 279).

Collins was employed by agreement (with such producers) as such Umpire at a salary of $24,000 per year, and was allowed in addition thereto an expense account, which was, until February, 1927, collected from operators in the Seminole area and disbursed by the Barnsdall Company (R., vol. I, pt. 2, p. 280).

In February, 1927, a new engagement at a like salary as such unofficial Umpire, in the Seminole area,

was made with Collins by a committee, of which Cole, of the Pure Oil Company, was Chairman, and Moody (of the Mid-Continent), McArthur (of the Barnsdall), Connery (of the Carter, a subsidiary of the Standard of New Jersey), and Pringle (of the Tidewater of Bayonne, New Jersey), were also members (R., vol. I, pt. 2, p. 280),

> "not a single member of which Committee represented any ownership *that is now* in the Oklahoma City field,"

(R., vol. I, pt. 2, p. 281), which fact becomes of significance in the discrimination in permitted production with allocation of market demand that will be shown (this brief, pages 18, 19 and 111) to have been subsequently practiced in favor of the Seminole area against the Oklahoma City field (in which this Plaintiff has its principal producing properties), notwithstanding the "potential" production of the Oklahoma City field was at all times approximately four times greater than Seminole.

The *control* thus fixed in this Committee, and its membership in succession, has remained definitely *constant*.

The membership of the Committee on the first of August, 1927, was composed of McArthur (of the Barnsdall), who has always functioned, Connery (of the Carter Company), Nicholas (then of the Texas Company), Pringle (of Tidewater), and Cole (of the Pure Oil Company), when the first appeal was made to the Corporation Commission that the Seminole Pool be *prorated to the outlet*; that Collins was then (August, 1927) named as Umpire *by this Committee*

(R., vol. I, pt. 2, p. 282), and at that time (Oct. 6, 1927) was first approved by the Commission as *Official* Umpire and continued at all times herein to so serve, without ever at any time having taken an oath of office as such officer (R., vol. I, pt. 2, p. 285).

Since that time a General Committee that supervises the whole arrangement, so far as the Mid-Continent Oil & Gas Association is concerned, has been named by certain of the operators. That Committee is composed of Sidwell (of the Prairie Oil & Gas Company), Filley (of the Texas Company), Nicholas (formerly of the Texas Company, now of Continental), Blue (of the Indian Territory Illuminating Oil & Gas Company, a Cities Service subsidiary), Young (of the Carter Oil Company), Richards (of the Pure Oil Company), Davis (of the Phillips Petroleum Company), and Fell, representing operators in Southern Oklahoma.

This Committee functions as a *fact-finding* and advisory committee, determining the facts as to *potential* production and (market) *demand* for crude oil in Oklahoma, making recommendations to the operators "over in the Seminole or other parts of the State" (R., vol. I, pt. 2, p. 283), and gets most of its information upon which it makes its recommendations from the Umpire (Collins), and a statistician (Mapes), employed by the Mid-Continent Association (R., vol. I, pt. 2, p. 284).

One Otto Bradford was appointed Umpire for the Oklahoma City field by the operators of that field, and privately paid for his services in the manner indi-

cated by the witness, McLennon (R., vol. I, pt. 2, p. 301), no part of such expense ever having been borne by the State of Oklahoma, and while Collins was Umpire for the entire State, his salary and all other expense incident to his office, was entirely borne by *Seminole operators,* as fully explained by the witness Chesbro (Asst. Treas. Carter Oil Company; R., vol. I, pt. 2, p. 300).

It must also be remembered that the Legislature, although in regular session while this case was being heard and decided (February 9th, 1931) upon the application for a temporary injunction, failed (R., vol. I, pt. 2, p. 303), as all other legislatures since the passage of the act have likewise failed, to make any appropriation for its enforcement. The operation of the law required the continuation of the policy adopted in 1927, when the Act was first invoked, of permitting a subsidiary of the Standard Oil Company of New Jersey (Carter Oil Company), or some other interested major producing company (Barnsdall Refining Company), to continue to collect from producers in the Seminole (favored in allocation of market demand) area, and disburse by such company's check the entire expense of State-wide Proration outside the Oklahoma City field (See Exhibit No. 15, R., vol. II, pt. 1, pp. 9 and 10), and at the same time accept the somewhat like beneficence in the Oklahoma City field (separately so treated for some unexplained reason) from some twenty of the fifty operators in that field (R., vol. I, pt. 2, pp. 302 and 303).

Exhibit No. 19 (R., vol. II, pt. 1, p. 14a) discloses, in

detail, the total pipeline runs for the Greater Seminole area for the period from October 18, 1929 to June 1st, 1931; with the total account of each producer for whom such oil was so run by the respective pipeline companies during said period of time.

Exhibit No. 20 gives in detail, the like information for the Oklahoma City producing area for the first six months of 1931 (Rec., vol. II, part 1, pp. 15 to 29, inclusive), with the explanation (Rec., vol. II, part 1, p. 15) that the Umpire's office,

> "was unable to furnish (plaintiff) with production, or pipeline figures previous to January 1st, 1931, due to the fact that this (Oklahoma City) field was operated on the *'time basis'* from October, 1929, to January 1st, 1931.".

See tabulation, volume I, part 1, page 136, of data set forth in said above identified Exhibits Nos. 19 and 20.

Production allowed under *proration* for all fields in Oklahoma, has always been limited to the pipe line companies' "nominations". That such *nominations*, so made to the Umpire, represented the quantity of crude oil which the marketers, purchasing companies, refiners and pipe line companies were willing to "take out of those fields" (at the posted price), (Rec., vol. I, pt. 2, p. 290); which information so passed on as the *market demand*, to the General Advisory Committee (hereinbefore identified), for that Committee's determination of the percentage of potential production to be allowed each field, to exactly produce such quantity, in such proportion from such of the fields of the State as the Committee might determine; concretely repre-

sents the working of *proration*, and makes possible the discrimination (upon the authority of the Orders of the Commission) that has been practiced between fields in Oklahoma, ostensibly in the interest of conservation.

The Seminole field is served by pipe lines of a total daily capacity of 468,200 barrels (Exhibit 16, R., vol. 2, pt. 1, p. 11), owned by 19 companies.

Six of these companies, Empire, Oklahoma Pipe Line (Carter), Prairie, Magnolia, Stanolind and Shell, the first three of which are represented on the General Advisory Committee, and all of whom are among or affiliated with major producers and refiners of the United States, own pipe lines with a total daily capacity of 290,000 barrels (63.57% of the total) in the Seminole field (Exhibit 16, R., vol. 2. pt. 1, p. 11), and own lines in the Oklahoma City field (Exhibit 17, R., vol. 2, pt. 1, p. 11), with a total daily capacity of 203,500 barrels (68.75% of the total in that field).

The "market demand", being based upon pipe line "*nominations*", must necessarily depend upon the attitude of these six companies, because of the magnitude of their ownership of pipe lines and/or crude oil producing properties.

The "*nominations*" so made resulted in Commission Orders allowing production of 85,000 barrels daily for the Oklahoma City field, during the month of January 1931, when the prevailing posted price for oil of 38 gravity was $1.01 per barrel (R., vol. 2, pt. 1, pp. 3 and 84A) whereas, the allowable production in the Seminole area for the identical period was 188,366 barrels daily (R., vol. 2, pt. 1, p. 3). For the month of

June, 1931, when the prevailing posted price for oil of 38 gravity had dropped to 63 cents (R., vol. 2, pt. 1, p. 84A), the allowable for Seminole remained at 179,310 barrels (R., vol. 2, pt. 1, pp. 6-9), while the allowable production in the Oklahoma City field was increased to 161,602 barrels daily (R., vol. 2, pt. 1, pp. 12-14).

In other words, the operators in the Seminole field (in control of Proration), were willing to allow the increase in the market demand from January to June, to go to the Oklahoma City field, when the price declined below a remunerative basis.

It is proper in this connection to ascertain if any of these companies were influenced in their *"nominations"* by the ownership of production in either of the fields.

In the Seminole we find the following:

	Pipeline capacity Exhibit 16 (R. vol. 2, pt. 1, p. 11).	Percent of total P. L. capacity in field.	June allowable production from their leases Exhibit 14 (R., vol. 2, pt. 1, p. 7).	Ratio their allowable production to their P. L. capacity.
Empire (affiliated with I.T.I.O.)	10,000	2.19	5,403	54.03
Oklahoma Pipe Line Co. (Carter)	55,000	12.06	17,359	31.56
Prairie	110,000	24.11	16,628	15.11
Magnolia	25,000	5.48	12,133	48.53
Stanolind	72,000	15.78	410	.57
Shell	18,000	3.95	4,563	25.35
Total	290,000	63.57	56,396	19.45

2m

In the Oklahoma City field the following condition existed:

	Pipeline capacity Exhibit 17 (R. vol. 2, pt. 1, p. 11).	Percent of total P. L. capacity in field.	June allowable production from their leases Exhibit 14 (R., vol. 2, pt. 1, p. 12).	Ratio their allowable production to their P. L. capacity.
Empire (Affiliated with I.T.I.O.)...	40,000	13.52	540 35,352	89.73
Oklahoma Pipe Line Co. (Carter)	20,000	6.76	none	.....
Prairie.....	45,000	15.20	1,031	2.29
Magnolia.....	26,000	8.78	none	.....
Stanolind.....	60,000	20.27	none	.....
Shell.....	12,500	4.22	229	1.83
Total.....	203,500	68.75	37,608	18.48

The Empire, in affiliation with I. T. I. O. (both Cities Service subsidiaries), in June of 1931, was by the orders permitted to produce in the Oklahoma City field, 35,892 barrels of oil daily, which quantity would have utilized 89.73% of their pipe line capacity in that field. Such privilege, as evidenced in these comparisons in figures, will always remain intrenched and staunchly defended.

Exhibit No. 11 (R., vol. 2, pt. 1, p. 3) discloses that the Oklahoma City field, in January of 1931, had 86.2% of the total *potential* production of the State, but was allowed to produce only 16.8% of the total *market demand* of the State; while the Seminole field, with 8.5% of the total *potential* production of the State. was allowed to produce 37.2% of the market demand of the State.

If the estimated potential of the Oklahoma City field of 5,388,298 barrels daily, as shown in Exhibit 11

(*supra*), had been calculated under the rule adopted as the Revised Formula by the Commission on February 10, 1931 (Exhibit 33, R., vol. 2, pt. 2, p. 206, paragraph 5), the Exhibit would have reflected the following:

Estimate Potential Revised:		
Oklahoma City	1,796,099	67.5%
Seminole	533,918	20.0%
Balance of State	330,003	12.5%
Total	2,660,020	100.0%
Allowable Production:		
Oklahoma City	85,000	16.8%
Seminole	188,366	37.2%
Balance of State	232,729	46.0%
Total	506,095	100.0%

The prevailing price for crude oil posted by the Prairie and/or Stanolind Pipe Line Companies, in the Mid-Continent fields long recognized as final arbiters in such privilege resulted in a decided advantage in the marketing of the products refined therefrom, to those companies *producing* their requirements in Seminole, as against those companies (situated as plaintiff) that were compelled by curtailment in the Oklahoma City field, to *purchase* crude oil for refinery needs, upon the market.

As illustrative of such handicap, the record reveals that when the posted price of 38 gravity Oklahoma City crude, on October 25th, 1930, was $1.01, the cost of manufacturing a barrel of such crude into its by-products when so purchased, was approximately 35c,

and the transportation cost thereof was 5c per barrel, making the total cost, if so purchased during such period, of approximately $1.41 per barrel, while the market value of the refined products therefrom was $1.64 (R., vol. 1, pt. 2, p. 311). On March 5th, 1931, the posted price of 38 gravity Oklahoma crude in the Oklahoma City field was 63c per barrel, the cost of manufacturing and transporting remained the same; and the market value of the refined products therefrom was $1.37½ (R., vol. 1, pt. 2, pp. 311-312). On June 1st, 1931, the posted price of 38 gravity Oklahoma crude in the Oklahoma City field was reduced to 35c per barrel, the cost of manufacturing and transporting remained the same, while the market value of the refined products therefrom was $1.01 (R., vol. 1, pt. 2, p. 312).

The manufacturing cost of 35c per barrel used in the foregoing calculations does not make any allowance for depreciation, upon the cost of physical equipment (in excess of six million dollars) so employed. The lifting cost of one barrel of oil in the Oklahoma City field during all the period of time was approximately 5 3/10c, and the approximate transportation cost during all the period of time was 5c per barrel (R., vol. 1, pt. 2, p. 312).

The entire arrangement is a price-fixing one (see Journal Entry No. 1856, Rec., vol. II, part 2, pp. 231 to 233, inc.) putting a burden upon interstate commerce (65% to 75% of all crude oil produced in Oklahoma having been found by the Commission to move in interstate commerce, Rec. vol. II, part 2, p. 135) and is plainly designed to create monopolistic control of the

industry in the executive officers of the producing and transporting branches thereof, which are in turn affiliated with major refining interests wholly outside Oklahoma.

The details of the operation of *proration* in Oklahoma are fully set forth in a series of orders of the Commission (which best speak for themselves), each written along the lines of a general type but of sufficient change in detail to require an examination of the whole thereof for a complete understanding of their scope and purpose.

Commencing with the base order of June 30, 1930, No. 5189, the entire series in chronological order, including No. 5549 of June 29, 1931, are set forth in their entirety in volume II, part 2, of the Record, pages 85 to 221, inclusive.

Journal entires (which do not have the dignity of orders) commencing with No. 1795, dated June 30, 1930, and ending with No. 1880 of April 15, 1931, also fully set forth in volume II, part 2 of Record, pp. 221 to 240, inclusive, should be read in their entirety.

Using Order No. 5189, *supra,* for illustration of the plan of operation, it will be noted that the Commission prohibited during the months of July, August and September, 1930, sixteen separate oil pools within the State from producing more than 66⅔% of their capacity; prohibited two pools from producing more than 33⅓% of their capacity, and prohibited three pools from producing more than 25% of their capacity and found that the Oklahoma City pools' capacity for July, August and September was 600,000 barrels per day, and allowed production of only 130,037 barrels (21.6%) for

July, 134,760 barrels (22.3%) for August and 146,933 barrels (24.5%) for September, and required each well in the Oklahoma City field to remain shut down for 65 days after coming in, each well in the East Earlsboro field to remain shut down for 49 days and all wells coming in in five other fields to remain shut down for 24 days each (Rec., vol. II, part 2, p. 100).

(In Orders No. 5246 of July 24, 1930, No. 5292 of August 30, 1930, No. 5369 of October 28, 1930, and No. 5413 of December 30, 1930, *supra*, the foregoing respectively identified groups of fields were likewise curtailed in varying percentages according to potential capacities of each well as set forth in detail in such orders. (Rec., vol. II, part 2, pp. 101, 108, 124, and 159.))

The basic justification for proration (as practiced) must be found in Order No. 5189, *supra*, for all subsequent or supplemental orders are but a continuation thereof with amplification in detail of the general plan there devised; and it is quite certain that whatever cause or causes for the institution of proration that may have then existed, did not in the course of time become more definite, urgent or necessary.

The substance of Order No. 5189, *supra*, is as follows:

(*a*) that certain pools (named) will be subject to the rules,

(*b*) that notice to all persons interested has been given by publication,

(*c*) that an *over-production* of crude oil in Oklahoma, is attended by *waste of gas* and *gas*

pressure, and that oil producers are *threatening* to and *will* commit *physical waste* of crude oil, *economic waste, under-ground waste, surface waste* and *waste* incident to the production of crude oil in *excess* of transportation or marketing facilities, or reasonable *market demands,* unless such Order be entered;

that there is a general over-production, and importation of crude and refined petroleum in the United States;

that the daily *potential* supply of the United States is 5,030,000 barrels as against an approximate daily demand of 2,840,000 barrels;

that unless there is a continuance of curtailment of production (in Oklahoma), the *conservation measures* now in effect *in other oil producing* states may be abandoned, resulting in large quantities of crude oil being produced in such other states, to the *demoralization of the industry,* with consequent *reduction* in demand for crude oil, with a corresponding increase in *waste* (not otherwise defined) and an undue exhaustion of our oil resources;

that such situation constitutes a great *state emergency* and that the laws of the State and powers of the Commission should be availed of to remove the same;

(*d*) that in addition to the foregoing, there are stocks of petroleum on hand in the United States aggregating more than 698,000,000 barrels;

that by reason thereof, *purchasers* of crude oil in Oklahoma are unwilling to purchase crude oil in Oklahoma *for storage* in any amount that would be adequate to take care of surplus of *potential* production over current demand, and that therefore, much oil *would go to earthen storage* where is would evaporate and thus be wasted;

that there is already an excess of oil stored locally, which will cause deterioration (in what manner not indicated);

(*e*) that to *curtail* production to reach the end desired, *proportionality of taking* must be invoked, to prevent *injustice* and *drainage* from one lease to another as well as the utilization by some operators of an undue proportion of gas pressure;

(*f*) that the daily *potential production* of existing wells in Oklahoma for the months of July, August and September, 1930, will be approximately 1,362,000 barrels and the daily *demand* (not otherwise amplified), will be approximately 650,000 barrels; that therefore an excess of potential production over *consumption* of 712,000 barrels daily cannot be produced without *waste* (not otherwise defined), as defined by the Statutes of Oklahoma;

that if no restraint were put upon producing wells now completed, or upon wells hereafter drilled during July, August and September, 1930, the *potential* production would be much

greater than 1,362,000 barrels, and would exceed all transportation and marketing facilities, and *reasonable market demands,* as to force large quantities of oil into *earthen storage* and otherwise cause *waste* (not otherwise defined) of a character prohibited by the laws of the State of Oklahoma;

that a subjoined schedule of production interesting in the detail of its percentage discrimination is then adopted (Rec., vol. II, part 2, pp. 89-91, inclusive);

(*g*) an attempted justification for such discrimination is thereupon made, for the following reasons:

1. In order to reduce *production* in this State to *demand,* in a manner least injurious to the producers and royalty owners as a whole;

2. To prevent unfair and unreasonable discrimination in favor of any one pool or common source of supply against another;

3. That proration should be applied to the *flush* and *semi-flush* pools, as distinguished from the old small wells in the State for some seven reasons, which are set out in full on pages 91 and 92 of Rec., vol. II, part 2.

(*h*) That the *varying percentages* of *curtailment as between pools,* as set forth in paragraph (*f*) (*supra*) of this Order, are *necessary, fair* and *reasonable,* because of the peculiar conditions in each case, and in this to-wit:

First. That said pools are not all served in common by the same pipelines and purchasers;

Second. That the outlet for certain of them is greater in proportion to potential production than in the case of others;

Third. Some of them are older than others;

Fourth. And have been prorated longer than others, under orders of the Commission, with a consequent greater reduction in potential flow and smaller possible production per well per day, and are therefore accorded a higher percentage allowable production;

Fifth. That in many cases individual pools are served by local purchasers;

Sixth. That in certain of the pools the sand and water conditions prevent as great curtailment as is possible in others;

Seventh. That in certain pools there is a *more intensive drilling campaign* and *wells of larger capacity* than in others.

That in the making of said schedule in paragraph (*f*) (*supra*), the producers and purchasers in all of said pools, were consulted, and meetings of all of said producers and purchasers were held at which all of the foregoing factors were considered, and that said *schedule represents the consensus of opinion of said producers and purchasers* as to reasonableness of arrangement, necessity and convenience of producers and purchasers, and equity as between the various common sources of supply, and was agreed to by all producers and purchasers except one.

(*i*) That by virtue of the facts as herein set forth, it is necessary:

First. To curtail production in each of the pools herein mentioned, in order to reduce the output of the State to *consumption demands* from the State as a whole, and thus to avoid *waste* (not otherwise defined).

Second. That the plan and schedule of percentages as contained in paragraph (f) (supra), are necessary to be observed in the case of each lease, in order to prevent the inequitable or unfair taking by any person, firm or corporation, from any one of said pools, as a common source of supply;

and,

Third. To prevent unreasonable discrimination in favor of any one such common source of supply, as against another;

and,

Fourth. By virtue of the further fact that no one purchaser, nor all of the purchasers together, and no one pipeline or transporter, nor all pipelines and transporters together, is, or are able, or willing to purchase and/or transport all of the oil from all of said pools, it is necessary that each purchaser and transporter from each of said pools conform and apportion his takings from each lease and pool to the percentages of potential output applicable thereto, as set forth in said schedule contained in paragraph (*f*) (*supra*);

Fifth. That if any purchaser or transporter should fail or refuse to so conform, but should

violate the plan as set forth in paragraph (*f*) (*supra*), by taking more than the due proportion as fixed by said plan, from any lease or leases in the said prorated areas, his action would have the immediate effect of discriminating against and of doing injury to surrounding owners by drainage and *disproportionate use* of the gas pressure and of creating discrimination as between pools; and would have the further effect of hindering, impeding or disrupting the whole plan or scheme for the prevention of *waste* as adopted and promulgated by the Commission.

For these reasons, the purchasers and transporters now serving each or any of said pools, or who may hereafter do so, are hereby made parties to this proceeding, and said purchasers and transporters are hereby prohibited from violating the rules, regulations and orders of the Commission as herein set forth, or in any manner aiding or abetting said producers in so doing.

(*j*) That in addition to the prevention of *waste* of crude oil, the establishment of the curtailment plan in this order set forth, will *tend to conserve* natural gas and gas pressure in the pools to which it shall be applied.

(*k*) That the output from the Oklahoma City pool should be limited to the reasonable *market demand* from said pool, which at the present time is about 16⅔% of the *potential production*, but which may increase to as much as 25% of the *potential production*, and therefore the

maximum permitted production should be left at 25% of the potential, as in existing orders; and that the *Umpire* and *Operators' Committee*, are *authorized to fix* from time to time the rate of curtailment necessary in said area, in order to conform the actual production to the *actual demand* from that area, with a maximum allowance of 25% of potential; it being understood, however, that whatever *demand* there is in the Oklahoma City pool, shall be prorated among all of the producing leases therein.

(*l*) With reference to East Earlsboro, the Commission finds that said pool is on the decline and owing to the possibility that said decline may be more rapid than is now estimated, it should be ordered that a minimum allowed production of 20,000 barrels per day for the East Earlsboro pool be specified; so that if the application of a curtailment of 66⅔% of the potential should at any time reduce the allowed production below 20,000 barrels per day for the pool as a whole, the *Umpire* and *Operators' Committee*, shall have *authority* to readjust the percentage so that a minimum production of 20,000 barrels per day from the pool as a whole, shall be allowed.

(*m*) The Corporation Commission finds that new pools of sands which may be opened up between July 1st and September 30th, 1930, should be curtailed 75% of potential, until otherwise ordered by the Commission.

> (n) That the allegations of the Petition filed herein, are true, and that accordingly these conditions of *waste* now exist in said pools, and *commission of waste* is imminent, and the same should be prohibited and prevented, and the following rules and regulations are necessary, reasonable and appropriate for that purpose;
>
> It is therefore ordered, * * *

The foregoing findings were thereupon made effective by the Order, and in addition thereto the following Thirteenth Subdivision of the Order was entered, as follows:

> "All purchasers and carriers of oil in the State of Oklahoma, are forbidden to purchase or carry oil produced in violation of these orders,"

which provision (with its burden upon interstate commerce), was, in form, carried throughout the orders. (Rec., vol. II, part 2, pp. 100-106-115-141-174-207.)

Upon the submission of the cause to the Statutory Court, the adoption of thirty-one voluminous and greatly involved special findings of fact (Rec., vol. I, pt. 2, pp. 177-212, inc.) sustaining the defendant's theory of the case below resulted in the following conclusion by a majority of the Court:

> "The theory upon which the Orders are predicated is that oil from a given pool shall not be produced in excess of the market demands therefor in order to prevent wasteful storage and

SUMMARY AND INDEX OF ARGUMENT.

First: The Act is Unconstitutional (pp. 32-69)

In that:

I. It is violative of the Fourteenth Amendment, because it:

1. **Is a deprivation of property without due process of law,**
2. **Denies the equal protection of the laws, and**
3. **Denies the liberty of contract,**

for the following reasons, to wit:

(*a*) The business of producing and marketing crude oil is not a public service business, nor does the producer devote his property to a public use (p. 32).

(*b*) The land owner, or his lessee, has a vested property right to drill wells on his land, penetrate the underground reservoir, and take all the NATURAL flow of oil and gas therefrom so long as he does so without physical waste, and devotes the production to useful purposes (pp. 32-46).

(*c*) Assuming the Legislature, in the exercise of the police power, may limit or restrain the production of oil for useful purposes, without actual physical waste and authorize the Commission to make rules and regulations for its enforcement, nevertheless, Section 2 of the Act, authorizing the Commission to ascertain "the actual value of such crude oil or petroleum", record its findings and "publish the same in some newspaper of general circulation in the State", and prohibiting the "taking of crude oil or petroleum from any oil bearing sand or sands in the State of Oklahoma at a time when there is not a market demand therefor at the wells at a price equivalent to the actual value of such crude oil or petroleum", is a price fixing law and void under the Fourteenth Amendment to the National Constitution (pp. 46-48).

(*d*) Section 2 of the Act—the section expressly conferring price-fixing powers on the Commission—is an inseparable part of the statute, being the very keystone of the whole legislative arch, and therefore either renders the entire act void under the Fourteenth Amendment or furnishes such key to the meaning and effect thereof as to render the entire act void (pp. 48-60).

(*e*) If Section 2 of the Act is unconstitutional, then the remaining portions of the act are too uncertain and indefinite to confer upon the Commission the power and authority it seeks to exercise through its rules and regulations, in that the Act does not define economic waste or waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands, and does not confer authority upon the Commission to define such waste, and if it does confer such authority then it is void because in violation of Section 1, of Article 4, of the State Constitution, dividing the powers of government into three separate departments, and Section 1, of Article 5, of the State Constitution, vesting the legislative power in the Legislature (pp. 60-61).

(*f*) Assuming that Section 2 of the Act is severable, the Act is nevertheless unconstitutional for the reason that Section 3 thereof is plainly for the purpose and has the necessary effect of authorizing an agency of the State to control prices for the benefit of a particular class—the oil producers (pp. 62-63).

(*g*) Even if proration of production, to meet market outlet, could be justified under the Fourteenth Amendment, the basis of such proration in the instant case is clearly inequitable, and involves a taking without due process of law, and is a denial of the equal protection of the laws (pp. 63-69).

II. It is a burden upon Interstate Commerce (pp. 123-132).

Second: The Orders (Rules and Regulations) of the Corporation Commission are Unconstitutional (pp. 70-123).

The Commission has administered the Act in an unconstitutional manner, so as to deprive the appellant of:

1. Its property without due process of law,
2. The equal protection of the laws, and
3. Its liberty of contract.

The discussion thereof is grouped into four sub-divisions, as follows:

(*a*) Umpires and Operators Committees (pp. 74-90).

(1) Assuming the Commission had authority to appoint Collins and Bradford Umpires, nevertheless, the Commission had no authority to delegate to Collins and Bradford, or to either of them and the Operators' Committee, any jurisdiction of a discretionary nature, and all the rules and regulations undertaking to vest any powers in Collins and Bradford other than purely clerical and ministerial are void, and consequently the Commission's rules vesting Collins and Bradford with jurisdiction over gauges and the amount of oil to be run by any

vest any powers in Collins and Bradford other than purely clerical and ministerial are void, and consequently the Commission's rules vesting Collins and Bradford with jurisdiction over gauges and the amount of oil to be run by any operator are void because they involve the exercise of judgment and discretion (pp. 74-80).

(2) The Legislature had no power to delegate authority to the Commission to create the office of Umpire and prescribe the qualifications and duties thereof and arrange for his salary, and if Section 5 of the Curtailment Act is construed to vest that authority in the Commission, it is void under Section 1 of Article 4 and Section 1 of Article 5 of the Oklahoma Constitution, questions neither raised, discussed nor passed upon by the Oklahoma Supreme Court in the Julian decision (pp. 80-81).

(3) The payment of salaries by the Operators' Committee to Collins and Bradford is against public policy, and vitiated all their alleged official acts (pp. 81-90).

(*b*) Gauges (pp. 90-106).

(1) That without Section 5 requiring the Commission to gauge each well, Section 4, purporting to authorize proportionate taking, would be void under the Fourteenth Amendment to the National Constitution in that it would delegate to the Commission an uncontrollable discretion and arbitrary power over all oil operators in the State—a power unlimited by any provisions of the statute and unascertainable by any oil operator (pp. 95-101).

(2) That a gauge made in accordance with the rules of the Commission permitting the operator to gauge his own wells in presence of a representative of an adjoining operator, although agreed to by a majority of the Operators' Committee or the Umpire, is void in that private parties are permitted to determine the basis (potential production) for the proration of production and consequently markets in which all operators are interested. That no such power and authority can be delegated to private persons is clear (pp. 101-104).

(3) That gauges made under the supervision of Collins and Bradford are illegal and void because their appointment as Umpires was against public policy. They never subscribed to any oath of office. The proration orders and regulations are all permeated with this inseparable, fatal vice. No one should be coerced under threatened penalties to recognize such gauges (pp. 104-105).

(4) The plaintiff and other operators were entitled to have gauges made under the supervision of a State officer, an officer who had subscribed to the oath required by the Constitution and was free to discharge his official duties without fear of alienating the affections of operators paying his salary and expenses (pp. 105-106).

(*c*) Price Fixing (pp. 106-113).

(1) The Commission has administered the law for the purpose of controlling prices of crude oil without regard to waste. The Commission has not at any time undertaken to protect the co-equal rights of the surface owners except during such periods as overproduction was threatening price structure (pp. 106-110).

(2) The Commission has never undertaken to do more than to make a mere estimate of the potential production of the Oklahoma City field and on that estimate, which concededly was greatly exaggerated, undertook to allocate markets (pp. 110-113).

(*d*) Conservation (pp. 113-123).

Third: **Interstate Commerce** (pp. 123-132).
The Rules and Regulations of the Commission are void in that they interfere with and constitute a burden upon interstate commerce.

Fourth: **Anti Trust Laws** (pp. 133-143).

(1) The Commission's rules and regulations limiting production are in excess of the Commission's powers, and void because the Commission has no authority to accept or assume the functions of a committee or association for the purpose of fixing prices or lessening "the production or sale of any product or article of commerce, or the use or consumption of the same or to prevent, restrict, limit or diminish the manufacture or output of any such article of commerce, use or consumption" (p. 133).

(2) The Commission had no power to interpose itself as a shield between the operators and purchasers on the one side and the Anti-Trust laws on the other—the Commission had no power to legitimate any such agreement or conspiracy by adopting it and making it what appeared to be its own (pp. 134-143).

wasteful use of gas pressure in lifting the oil.

* * * *

"Under these circumstances we are of the opinion that the limiting of the taking to the market demands is a reasonable regulation for the prevention of *waste* and the protection of the co-equal rights of the owners of land over such pool" (Rec., vol. I, pt. 2, p. 226).

Assignment of Error.

For errors relied upon by appellant in No. 485, see Appendix B, pages 152-160.

Legal Points Preliminary to Main Questions.

Before considering the constitutionality of the Act and the validity of the Commission's Rules and Orders plaintiff deems it appropriate that certain preliminary points set forth in Appendix "D", pages 164-176, should be considered by the Court.

ARGUMENT.

In support of its contention that the Curtailment Act, in so far as it authorizes the Commission to close producing wells or restriot and limit the amount of oil that may be produced therefrom, to a pre-determined market outlet, is the taking of private property without due process of law, denies the equal protection of the laws, and denies plaintiff's liberty of contract in violation of the 14th Amendment to the National Constitution, plaintiff submits the following:

(a) The business of producing and marketing crude oil is not a public service business, nor does the producer devote his property to a public use.

Chas. Wolff Packing Co. v. *Court of Industrial Relations,* 262 U. S. 522, 67 L. Ed. 1103, 27 A. L. R. 1280.

Tyson & Bro. v. *Banton,* 273 U. S. 430, 71 L. Ed. 722.

Williams v. *Standard Oil Co.,* 278 U. S., 239-240.

(b) The land owner or his lessee has a vested property right to drill wells on his land, penetrate the underground reservoir, and take all the NATURAL flow of oil and gas therefrom so long as he does so without physical waste and devotes the production to useful purposes.

(NOTE: See Assignment of Errors, 3 and 4, R., vol. I, pt. 2, p. 380.)

Or, said another way: As construed by the Commission and the court below as vesting power in the Commission to limit the plaintiff's production to such an amount of oil "as the production of" its "well or wells" bears "to the total production of such common source of supply" because "the full production from" the "common source of supply of such crude oil or petroleum" will exceed "transportation or marketing facilities or reasonable market demands" (Sec. 3 of the Act) is a taking of plaintiff's property without due process of law in that it compels plaintiff to forego the use of the most valuable right incident to its ownership of land or leases and *forces it to purchase crude oil from other producers to meet its refinery needs.* (See 4th Assignment of Errors.)

Section 8395, Okla. C. St. 1921 (in force since statehood), defines real property as (1) land, (2) that which is affixed to land, (3) *that which is incidental or appurtenant to land,* and (4) that which is immovable by law.

Section 5250, Okla. C. St. 1921, provides that, "The words 'land', 'real estate' and 'premises', when used herein or in any instrument relating to real property, are synonyms and shall be deemed to mean the same thing, and, unless otherwise qualified, to include lands, tenements and hereditaments; and the word 'appurtenances' unless otherwise qualified shall mean all improvements and *every right of whatever* character pertaining to the premises described".

Section 3560, Okla. C. St. 1921, in force since statehood, declares that "the words 'real property' are coextensive with lands, tenements and hereditaments."

The statutes of Indiana and Rhode Island define *land* in almost the same language contained in the Oklahoma statutes. In *Potter* v. *Arnold*, 15 R. I. 350, 5 Atl. 379, and *Hyatt* v. *Vincennes National Bank*, 113 U. S. 408, 28 L. Ed. 1009, the courts held that the Rhode Island and Indiana statutes defining real estate include *incorporeal hereditaments.*

Neither the land owners nor their lessees in a given oil field have title to the oil and gas in place, and no title is acquired to the oil and gas until reduced to possession by extracting the same from the earth. But each land owner and his lessee has the right to drill wells on his land into the underground pool and take therefrom all the oil and gas he can get so long as he does not waste it. If he devotes it to a useful purpose his right to take is not confined to the particular oil that may be under his land at any given date. His right extends to the taking of any oil he can find under his land without regard to where it comes from. All offset wells draw oil from adjoining lands as well as the land upon which they are located. This has long been the established rule of property in Oklahoma.

In *Kolachny* v. *Galbreath*, 26 Okla. 772 (decided July 12, 1910), the Court said:

> "Oil and gas, while in the earth, unlike solid minerals, are not the subject of ownership distinct from the soil, and the grant of the oil and gas, therefore, is a grant, not of the oil that is in the ground, but of such a part as the grantee may find, and passes nothing that can be the subject of an ejectment or other real action."

See, also:

Rich v. *Doneghey*, 71 Okla. 204, 3 A. L. R. 352;
Frank Oil Co. v. *Belleview Gas & Oil Co.*, 29 Okla. 719;
Priddy v. *Thompson*, 204 Fed. 955 (Okla.), 8th Cir. Apps.;
Alexander v. *King*, 46 Fed. (2d) 235, 10th Cir. Apps. (Okla.).

Judge McDermott in *Alexander* v. *King, supra*, said:

> "The leading Oklahoma case is that of *Rich* v. *Doneghey*, 71 Okla. 204, 177 P. 86, 89, 3 A. L. R. 352, in which the Supreme Court of Oklahoma defined the rights of landowners to oil and gas underneath their land." * * *
>
> "Turning then to the rights granted under a lease similar to the ones here involved, the Court said:
>
> "'In other words, it was a grant of the exclusive right, for the time specified, *to take all the oil and gas that could be found by drilling wells upon the particular tract of land*, with the accompanying incidental right to occupy so much of the surface as required to do those things necessary to the discovery of and for the enjoyment of the principal right so to take oil or gas.'" (Italics ours.)

There is no method known to science by which the oil under a given tract of land can be segregated to that tract in the natural reservoir.

Oil and gas do not belong to the State. So long as wild animals remain in the State they are owned by the State for the benefit of all the people (*LaCoste* v. *De-*

partment of Conservation, 263 U. S. 545) subject to the Treaty making powers of the National Government (*Missouri* v. *Holland,* 252 U. S. 416). That the lessee has the right to take oil out of the ground so long as it is devoted to a useful purpose without waste was clearly announced by this Court in *Ohio Oil Co.* v. *Indiana,* 177 U. S. 209. Mr. Chief Justice White said:

> "The identity, however, is for many reasons wanting. In things *ferae naturae* all are endowed with the power of seeking to *reduce a portion of the public property* to the domain of private ownership by reducing them to possession. In the *case of natural gas and oil no such right exists in the public.* It is vested *only in the owners in fee of the surface* of the earth within the area of the gas field. This difference points at once to the *distinction between the power* which the lawmaker may exercise as to the two. In the one, *as the public are the owners,* every one may be absolutely prevented from seeking to reduce to possession. No devesting of private property under such a condition can be conceived, unless the *public are the owners,* and the enacting by the State of a law as to the public ownership is but the discharge of the governmental trust resting in the State as to property of that character. *Geer* v. *Connecticut,* 161 U. S. 519, 525, 40 L. Ed. 793, 795, 16 Sup. Ct. Rep. 600. On the other hand, as to gas and oil the surface proprietors within the gas field all have the right to reduce to possession the gas and oil beneath. *They could not be absolutely* deprived of this right which belongs to them without a *taking of private property.*"

This statement of the constitutional rights of the landowners was forcefully reiterated by the Court in

West v. *Kansas Natural Gas Co.*, 221 U. S. 229, 252, 253, 55 L. Ed. 716. In that case, Mr. Justice McKenna referring to the Ohio Oil Company case, quoted the above language, and said the Indiana statute was upheld because its purpose was to prevent waste. Mr. Justice McKenna said:

> *"We said that the surface owners of the soil, owners of the gas as well, could not be deprived of the right to reduce it to possession without the taking of private property. It surely cannot need argument to show that if they could not be deprived of the right to reduce the gas to possession, they could not be deprived of any right which attached to it when in possession."*

The Curtailment Act does not undertake to communize the oil fields because it does not require that each operator shall have the same number of barrels out of the so-called common pool. One operator may bring in a 28,000-barrel well, whereas another operator may bring in a 2,800-barrel well within a radius of a few hundred feet of the 28,000-barrel well (See R., vol. II, pt. 3, pp. 302-302A).

The underground stratum penetrated by the 28,000-barrel well is a valuable appurtenance to the land over, around and above it and inheres in the title to the land itself as much so as the fertility of the soil. The drawing and producing capacity of that underground area into which the 28,000-barrel well penetrated cannot be constitutionally partitioned among the adjacent land owners so as to take away from the 28,000-barrel well a part of its producing capacity to be transferred to the

2,800-barrel well so as to increase its producing capacity.

Neither the Act nor the rules and regulations require the discoverer of the first well to close his well until the other land owners can drill into the so-called common pool and each get a number of barrels equivalent to the production of the discovery well. The Curtailment Act undertakes to prohibit the natural flow of the wells and this is what we say the Legislature cannot do, so long as the producer is not *wasting* the oil but is devoting it to a useful purpose.

Plaintiff had a legal property right to drill a well on its land covered by its lease and take all the *natural* flow of oil therefrom without regard to whether the oil recovered was drawn from under the land of its neighbors. Its neighbors have no vested right in the oil and gas in place in their lands. Neither has the plaintiff a vested right in the oil and gas beneath its lands. But the plaintiff has the legal property right to drill wells and take—without waste—all the natural flow of the oil without regard to its source, and we have found no adjudicated case to the contrary unless the *Julian Opinion*, 145 Okla., 237, 292 Pac., 841, can be so construed, which we deny.

In support of the foregoing principles, see:

Barnard v. *Monongahela Natural Gas Co.*, 216 Pa. 362, 65 Atl. 801;

People's Gas Co. v. *Tyner*, 131 Ind. 277, 31 Am. St. Rep., 433;

Kelley v. *Ohio Oil Co.*, 57 Ohio St., 317; 63 Am. St. Rep., 721;

Letts v. Kessler, 54 Ohio St. 73;
Higgins Oil & Fuel Co. v. *Guaranty Oil Co.*, 145 La. 233, 82 So. 206, 5 A. L. R. 411 (to which particular attention is invited. See Appendix E, page 194).
Louisiana Gas & Fuel Co. v. *White Bros.*, 157 La. 728, 103 So. 23;
Calor Oil & Gas Co. v. *Franzell*, 128 Ky. 715, 109 S. W. 328;
Jones v. *Forest Oil Co.*, 194 Pa. 379, 48 L. R. A. 748;
Peterson v. *Grayce Oil Co.*, 37 S. W. (2d) 367;
Summers on Oil and Gas, p. 72, and 74;
Thornton on Oil & Gas, 3rd Ed. vol. 1, Secs. 32, 33.
(See Appendix E, pp. 177-192, for quotations from above cases.)

Summers, in his recent work on Oil and Gas, published in 1927, discusses this right of the land owner to take the natural flow of oil without regard to its source—whether from under his land or his adjoining neighbor's land. After an elaborate citation of authorities and analysis thereof he says (p. 72) "When analyzed, it means that every landowner is privileged to take oil and gas from his land by operations thereon, regardless from whence it comes, and that his neighbors have like privileges to so act on their lands."

Also, the same authority, on page 74, says:

> "It has been held that the landowner may 'shoot' his gas well, to thereby increase the flow, without violating the rights of neighboring

owners. But in some cases it is held that the pumping of natural gas may be restrained, if the effect is to injure the common reservoir from which it is drawn. *The limitation in these cases is not upon the amount taken, but the manner of taking.*

"The rule of law is thus firmly established by an unbroken chain of dicta and decision, that A as the owner of Blackacre is legally privileged to drill wells for oil or gas upon his own land at any spot he may select, and to produce oil and gas therefrom, although a part of the oil or gas so produced is taken from B's land, Whiteacre, an adjoining or nearby tract."

It is therefore plaintiff's contention that the Oklahoma Legislature, in February, 1915, more than 7 years after Statehood, had no power to divest the owners of land in Oklahoma and/or their lessees of the property right to drill wells upon their land for oil, tap the underground reservoir, and take therefrom all the natural flow of oil from the wells so long as the producer did not pour the oil on the ground or otherwise waste it. So long as the producer devotes the oil to a useful purpose his right to take and appropriate the natural flow through his own wells can not be arrested by the Legislature or by the Commission under authority of the Legislature for the purpose of enabling an adjacent land owner either to find capital with which to develop his property or a market in which to dispose of his oil. This question is very different from the statutes involved in *Ohio Oil Co.* v. *Indiana,* 177 U. S. 190, prohibiting "a contractor, owner, lessee, agent, or manager" from allowing or

permitting "the flow of gas or oil from any such well to escape into the open air without being confined within such well or proper pipes or other safe receptacle," etc., and different from the statute involved in the Natural Carbonic Gas case, 220 U. S. 61, sustaining the constitutionality of a New York statute entitled "An Act for the protection of the natural mineral springs of the state, and to prevent waste and impairment of its natural mineral waters," prohibiting "pumping, or otherwise drawing by artificial appliance, from any well made by boring or drilling into the rock, that class of mineral waters holding in solution natural mineral salts and an excess of carbonic acid gas, or pumping, or by any artificial contrivance whatsoever in any manner producing, an unnatural flow of carbonic acid gas issuing from or contained in any well made by boring or drilling into the rock, *for the purpose of* extracting, collecting, compressing, liquifying, or vending such gas as a commodity otherwise than in connection with the mineral water and the other mineral ingredients with which it was associated."

In the Indiana Legislative Act sustained in *Ohio Oil Co.* v. *Indiana,* supra, the production of oil was not restrained or prohibited but regulated in order to protect the *gas from waste,* whereas, the New York statute involved in the *Natural Carbonic Gas Company case, supra,* prohibited "extracting, collecting, compressing, liquifying, or vending such gas" in order to protect the mineral waters from waste.

In the *Midland Carbon Company* case, 254 U. S. 300, the statute prohibiting "the use, consumption or burn-

ing of natural gas taken or drawn from any natural gas well or wells" without utilizing the heat units, was sustained on the ground that the Act prohibited actual physical waste.

No statute prohibiting the production of oil or gas for a useful purpose, without physical waste, to the capacity of the natural flow of the wells with due regard to preventing waste of gas in favor of oil or of oil in favor of gas has been sustained by any court.

May the Legislature vest in any official commission authority to promulgate rules (admittedly based on over-production) regulating the private business of producing oil and gas to the extent of compelling the retention of the oil and gas in the natural reservoir until the Commission later finds from such evidence as may be before it, that all the producers in a given territory are provided with, or have found ample transportation facilities, satisfactory marketing facilities, etc., accompanied by a pre-determined "reasonable market outlet"? Or, said another way: Admittedly plaintiff's control of pipe line facilities for its own production, the ownership of a refinery and markets through its filling stations in Oklahoma and several states, gives it an advantage over the producers in the same oil pool without these transportation and marketing facilities for any period during which the pool as a whole is capable of producing more oil than can be sold and transported out of the pool at prices satisfactory to the majority of the producers. But this advantage lies in the acquisition of its markets which involved the expenditure of capital vastly in

excess of the non-integrated producer's investment and thus entailing a correspondingly greater hazard. *Does this advantage acquired by the hazard of large capital investment fall within the protection of the 14th Amendment to the National Constitution or is it subject to confiscation without compensation under the police power of the state?* If a one-legged man enters a Marathon race must each of his competitors withdraw from the race or cut off a leg in order to share his handicap? If an oil lessee is without capital to develop his lease can the Legislature prevent his adjacent lessee with capital from drilling for oil until the other can find the money to also operate? The bankrupt lessee has the same argument to put forward as here, in substance, by the defendants, to-wit, that it would be unfair and inequitable to let one with finances penetrate the oil-bearing sand and remove the oil—without waste—while he, the bankrupt, had *not* the means to explore his property.

Judge Kennamer's dissenting opinion tersely sizes up this question as follows:

> "I cannot subscribe to the conclusion that the owners of land in a common oil pool own such oil and gas in common, and the right of one owner to reduce oil and gas underlying the surface of his land to possession is dependent upon the ability of another owner to reduce the oil and gas beneath the surface of his land to possession. No such rule of property exists in the State of Oklahoma.
>
> "The right of an owner of land within Oklahoma to drill wells and reduce oil and gas to pos-

session which lies beneath his land is a property right protected by the Fourteenth Amendment to the Federal Constitution. The Oklahoma Supreme Court has repeatedly followed the rule that an estate in fee simple in lands in Oklahoma includes all oil and gas in place in and under the land so long as it remains therein, and the owner of such land has a vested right to use it and to enjoy the profits accruing therefrom, since without the latter the former cannot be of value. *Wright* v. *Carter Oil Co.*, 97 Okla. 46, 223 Pac. 835; *Green* v. *Biddle*, 8 Wheat. 1-76, 5 L. Ed. 566; *Terrace* v. *Thompson*, 263 U. S. 215, 44 S. Ct. 15, 68 L. Ed. 274. * * *

"It is the contention of counsel for the defendants that if the amount of oil to be produced is not restricted under the proration orders of the commission it will result in waste through storage of crude oil, especially storage in earthen tanks. Aside from a rule prohibiting storage in earthen tanks, the commission has in no manner undertaken to regulate the storage of crude oil. It is a matter of common knowledge that millions of barrels of crude oil are now confined in storage. If the Legislature deems storage of oil in earthen tanks wasteful, and there is no evidence that such practice has been engaged in, during recent years, it can pass a brief act prohibiting such storage. The evidence is uncontroverted that the complainant in this case has been and is capable of producing, refining, and marketing its products without waste."

We submit that this case falls within the principle announced and applied in *Pennsylvania Coal Co.* v. *Mahon*, 260 U. S. 393, 67 L. Ed. 322, 28 A. L. R. 1321,

in which this court held unconstitutional an act of the Pennsylvania legislature forbidding the mining of coal in such a way as to cause the subsidence of any structure used as a human habitation, etc. Mr. Justice Holmes quoted a Pennsylvania decision saying "For practical purposes the right to coal consists in the right to mine it." Mr. Justice Holmes further said:

> "What makes the right to mine coal valuable is that it can be exercised with profit. To make it commercially impracticable to mine certain coal has very nearly the same effect for constitutional purposes as appropriating or destroying it. This we think that we are warranted in assuming that the statute does."

In *Buchanan* v. *Warley*, 245 U. S. 74-75, 62 L. Ed. 161, this court said:

> "The Fourteenth Amendment protects life, liberty and property from invasion by the States without due process of law. Property is more than the mere thing which a person owns. It is elementary that it includes the right to acquire, *use and dispose of it*. The Constitution protects these essential attributes of property. *Holden* v. *Hardy*, 169 U. S. 366, 391, 42 L. Ed. 780, 790, 18 Sup. Ct. Rep. 383."

In *Lawton* v. *Steele*, 152 U. S. 133-144, 38 L. Ed. 385, 388, this court said:

> "To justify the State in thus interposing its authority in behalf of the public, it must appear, *first*, that the interests of the *public generally*, as distinguished from those of a particular class, re-

quire such interference; and, *second*, that the means are reasonably necessary for the accomplishment of the purpose, *and not unduly oppressive upon individuals.* The legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations. In other words, its determination as to what is a proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the courts."

Although police power "is an attribute of sovereignty," is "inherent in the States," and antedates the Constitution, it is not superior to the Fourteenth Amendment. Nevertheless, it is a dangerous enemy of constitutional rights and unless confined to its proper limitations will sooner or later destroy the last *remnant* of constitutional government.

(c) Assuming the Legislature, in the exercise of the police power, may limit or restrain the production of oil for useful purposes without actual physical waste and authorize the Commission to make rules and regulations for its enforcement, nevertheless, Section 2 of the Act, authorizing the Commission to ascertain "the actual value of such crude oil or petroleum", record its findings and "publish the same in some newspaper of general circulation in the State", and prohibiting the "taking of crude oil or petroleum from any oil-bearing sand or sands in the State of Oklahoma at a time when there is not a market demand therefor at the well at a price equivalent to the actual value of such

crude oil or petroleum", is a price-fixing law and void under the 14th Amendment to the National Constitution. (See 5th Assignment of Error.)

Williams v. *Standard Oil Co.*, 278 U. S. 239, 73 L. Ed. 308;

Tyson & Bro. v. *Banton*, 273 U. S. 418-429, 71 L. Ed. 718-722;

Chas. Wolff Packing Co. v. *Court of Industrial Relations*, 262 U. S. 522, 67 L. Ed. 1103;

Fairmont Creamery Co. v. *State of Minnesota*, 274 U. S. 1, 71 L. Ed. 893;

Ribnik v. *McBride*, 277 U. S. 350, 72 L. Ed. 913.

It clearly deprives the producer of his liberty of contract, his right to negotiate his own price without regard to the price his adjacent producers are willing to take for their oil coming from the same field.

In *Allgeyer* v. *State*, 165 U. S. 578-589, 41 L. Ed. 832-835, this court said:

> "The liberty mentioned in that amendment means, not only the right of the citizen to be free from the mere physical restraint of his person, • • • but the term is deemed to embrace the right of the citizen • • • to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to *enter into all contracts* which may be proper, necessary, and essential to his carrying out to a successful conclusion the purposes above mentioned."

The last paragraph of the Commission's order of February 18th, 1916 (R. vol. 2, pt. 3, p. 269), says,

"Without going into all the details of the evidence with reference to the relative value of the Healdton oil with other oils, we are of the opinion that the fixing of a price of crude oil under Sec. 2 of this Act is absolutely impossible and impracticable. The complaint is therefore dismissed."

In the last paragraph of the majority opinion in *Julian Oil and Royalties Co.* v. *Capshaw,* 145 Okla. 243, it is said that Section 2 of the Act "is not involved in this action, and it is not to be assumed that if the Corporation Commission were attempting to fix the market value of oil under that section, we would sustain same; but we do hold that the Act as a *whole* provides a valid method of preventing waste of the oil of this State; that the same is a proper exercise of the police power of the State; and that plaintiff has not been deprived of any of its constitutional rights."

As will appear in the next sub-section, we contend that the Act as a whole, and as administered by the Commission, did intend to fix prices by limiting production and did so in fact.

(d) Section 2 of the Act—the section expressly conferring price-fixing powers on the Commission—is an inseparable part of the statute, being the very keystone of the whole legislative arch, and therefore either renders the entire act void under the 14th Amendment or furnishes such key to the meaning and effect thereof as to render the entire Act void. (See 5th Assignment of Error R. vol. 1, Pt. 2, p. 381.)

By Sections 2, 3, and 4, the Legislature intended to authorize the Commission to control the price of crude oil.

In *Smith* v. *St. Louis & S. W. R. Co.*, 181 U. S. 248-257, this court said "Any pretense or masquerade will be disregarded, and the true purpose of a statute ascertained," and in *Lochner* v. *New York*, 198 U. S. 45-64, this court said, "The purpose of a statute must be determined from the natural and legal effect of the language employed; and whether it is or is not repugnant to the Constitution of the United States must be determined from the natural effect of such statutes when put into operation, and not from their proclaimed purpose."

In *Near* v. *Minnesota ex rel. Olson*, 283 U. S. 709, Mr. Chief Justice Hughes said:

> "• • • it is enough to say that in passing upon constitutional questions the court has regard to substance and not to mere matters of form, and that, in accordance with familiar principles, the statute must be tested by its operation and effect."

Section 10 of the Act, declaring "that the invalidity of any section, subdivision, clause or sentence of this act shall not in any manner effect the validity of the remaining portion thereof," provides, as said by Mr. Justice Brandeis in *Dorchy* v. *Kansas*, 264 U. S. 286, "a rule of construction which may sometimes aid in determining that intent" but "it is an aid merely; *not an inexorable command.*"

The Act is inseparable under the rule announced in the following cases:

Dies v. *Bank of Commerce*, 100 Okla. 205;
Parwal Inv. Co. v. *State*, 71 Okla. 122;

Williams v. *Standard Oil Co.*, 278 U. S. 239, 73 L. Ed. 308;
Hill v. *Wallace*, 259 U. S. 44-75, 66 L. Ed. 823.

As said in *Williams* v. *Standard Oil Company, supra,* (p. 243) Sections 3, 4, and 5, "*are mere adjuncts of the price-fixing provisions of the law, or mere aids to their effective execution.*"

Without Section 2, Section 3 is void for uncertainty in that "economic waste * * * and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands" clearly refers to Section 2 prohibiting the "taking of crude oil or petroleum from any oil-bearing sand or sands in the State of Oklahoma at a time when there is not a market demand therefor at the well at a price equivalent to the actual value of such crude oil or petroleum," as determined by the Commission under its authority conferred by the Act. The prevention of actual physical waste is one thing the ordinary man may understand, but "economic waste * * * and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands" means entirely something else. The Act prescribes no standard by which an operator can govern himself and it is clear that when the Legislature, by Section 3, prohibited "economic waste * * * and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands" it had in mind the production of oil "when (using the language of Section 2) there is not

a market demand therefor at the well at a price equivalent to the actual value" as fixed by the Commission. Sections 2, 3 and 4 are inseparably united and must be construed together as a unit, otherwise Section 3 is void for uncertainty in that neither the statute nor the facts define "economic waste, underground waste, * * * and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands."

"Reasonable market demand"—what does it mean? Obviously these three important words cover two things, to-wit: (*a*) "reasonable market" and (*b*) "reasonable demand." *"Reasonable demand"* as therein used has to do with quantity, whereas *"reasonable-market"* has to do with *price.*

That which constitutes economic waste is a political question or business question about which many may differ. In order for plaintiff to obtain out of the Oklahoma City field, under proration, its refinery needs, it would be compelled to drill anywhere from 40 to 50 wells at a cost of many millions of dollars as it would not be allowed to take from each well more than 6 per cent of its capacity under one method of arriving at potentials adopted by the Commission and less than 3 per cent under another method of the Commission for the identical purpose. The Indian Territory Illuminating Oil Company has 309 wells in the field (R., vol. II, pt. 1, pp. 19 to 24, inc.); the Phillips Petroleum Corporation has 46 wells in the field (R., vol. II, pt. 1, pp. 25-26); and Slick-Urschel has 88 (R., vol. II, pt. 1, pp. 28-29). This entails a tremendous *economic waste.*

Dr. Ralph Arnold, one of the greatest geologists and

petroleum engineers in the United States, for 6 years a member of the geological survey of the United States Government, organizing the Petroleum Division of the United States Bureau of Mines and Chairman of the advisory committee appointed by the California courts in connection with certain litigation in that state, testified that there was no method known to science for determining underground waste; that in operating a given well or drilling into a given sand one expert might prescribe the way to do so to get the greatest recovery and suffer the least waste underground, while another *set of experts* would say to operate in an entirely different manner (R., vol. 1, pt. 2, p. 332).

What constitutes "reasonable market demands" is inseparably connected with price as one might regard the demand reasonable at a price of 50 cents per barrel while another operator might regard anything less than $1.00 a barrel unreasonable. Therefore, unless Sections 3, 4 and 5 are construed together, Section 3 must fall for the want of certainty under the authorities cited on pages 98 and 99 of this brief. Construing them as a unit, the Legislature declared the production of oil in Oklahoma to be "economic waste" unless there was a "market demand therefor at the well at a price equivalent to the actual value of such crude oil or petroleum" as determined by the Commission.

Section 4 does not become operative until "the full production from any common source of supply of crude oil or petroleum in this state can only be obtained under *conditions constituting waste, as herein defined,*" which clearly refers to the definition of waste in Section 2. The last sentence in Section 4 undertakes

to vest the Commission with power *"to prevent unreasonable discrimination in favor of any one such common source of supply as against another,"* which can not possibly refer to one oil pool draining another, as the evidence shows that even the Seminole field is composed of a series of structural fields incapable of draining each other and that wells in the Oklahoma City field can not possibly drain the Seminole field nor any of the other fields. The Oklahoma state fields are separated by distances from 40 to 95 miles (R., vol. 1, pt. 2, p. 260). Under well settled rules of statutory construction a statute will not be given an absurd interpretation. *U. S.* v. *Regan,* — U. S. —, decided Nov. 23, 1931. So the clause in Section 4 conferring authority upon the Commission "to prevent unreasonable discrimination in favor of any one such common source of supply as against another" must be construed as a power to shift markets from one field to another, which we think the evidence shows the Commission has been doing under the pretext of preventing waste.

Irrespective of the evidence "not what has been done under a statute, but what may reasonably be done under it is the test of its validity" as said by the New York Court of Appeals in *In re Richardson,* 247 N. Y. 401, 160 N. E. 655-661.

In our judgment the dissenting opinion on this point is unanswerable. Judge Kennamer said (R., vol. 1, pt. 2, p. 238):

> "With all deference to the opinion of my associates, I cannot escape the conclusion that Section 4 of the Act is no more nor less than a part

of the legislative scheme to fix prices for crude oil and that it does not provide for a fair and equitable proportionate taking by separate operators in the common pool. Section 4 does not purport to require equitable taking except 'Whenever the full production from any common source of supply * * * can only be obtained under conditions constituting waste, as herein defined,' which must mean that a person 'having the right to drill into and produce oil from any such common source of supply, may take therefrom only such proportion of all crude oil and petroleum that may be produced therefrom, without waste, as the production of the well or wells of any such person, firm or corporation, bears to the total production of such common source of supply,' whenever, quoting Section 2, 'there is not a market demand therefor at the well at a price equivalent to the actual value of such crude oil or petroleum,' as determined by the Commission. Section 4 means that whenever there is not a market at the price fixed by the Corporation Commission for 'the full production from any common source of supply of crude oil or petroleum in this state' then 'any person, firm or corporation having the right to drill into and produce oil from any such common source of supply, may take therefrom only such proportion of all crude oil and petroleum that may be produced therefrom' and sold 'at the well at a price equivalent to the actual value of such crude oil or petroleum' as determined by the Corporation Commission under the authority attempted to be conferred upon it by Section 2 of the Act. If this is not the correct construction and the Legislature in-

tended to authorize the Commission to enforce in the oil fields 'a just distribution, to arise from the enjoyment' by the operators in that field 'of their privilege to reduce to possession,' then why did not the Legislature prohibit an operator from pumping his wells unless his adjoining neighbor in the same pool has facilities for pumping oil from the common source (and an operator using a pump may restrain an adjoining operator from leaving open unproducing wells on his property the effect of which is to interfere with the action of the pump. *Higgins Oil & Fuel Co.* v. *Guaranty Oil Co.*, 145 La. 233, 82 So. 206, 5 A. L. R. 411 and note; *Bassel* v. *West Virginia Central Gas Co.*, 86 W. Va. 198, 103 S. E. 116, 12 A. L. R. 1398; *Thornton on Oil & Gas*, 3rd ed., vol. 1, sec. 32) and why did not the Legislature require an operator to shut down his offset wells in the event his adjoining neighbor's wells are choked up by drilling trouble or otherwise and thereby prevented from producing? The so-called proportionate taking as provided for by Section 4 only becomes operative in flush pools or in pools the full production of which can not find a market 'at the well at a price equivalent to the actual value of such crude oil or petroleum' as determined by the Corporation Commission. No provision is made prohibiting an operator from shooting his wells (*Thornton on Oil & Gas*, 3rd ed., vol. 1, sec. 33) and thereby artificially increasing the production of oil therefrom, although his neighbor may not be able to shoot his wells. It is clear to my mind that Section 4 is nothing more than a mere mask behind which to disguise the price fixing features of the statute.

Section 4 clearly contemplates markets and not an equal distribution of the oil in a common pool. If 'a just distribution, to arise from the enjoyment * * * of their privilege to reduce to possession,' using the language of the Ohio Oil Company case, was the purpose of Section 4 of the Act, it is strange it did not provide for taking into consideration acreage in figuring out the proportionate taking. Yet Section 4 says that an operator can take out 'only such proportion of all crude oil and petroleum that may be produced therefrom, without waste, as the production of the well or wells of any such person, firm or corporation, bears to the total production of such common source of supply.' Acreage is ignored and an operator with two 5,000 barrel wells on 5 acres may take out of the common source of supply, under the provisions of Section 4, as much oil as an operator with two 5,000 barrel wells on 20 acres in the same field. Proportionate taking per well is wholly inequitable if the Legislature intends to secure 'a just distribution, to arise from the enjoyment * * * of their privilege, to reduce to possession' because the operator with 20 acres *has four times as much privilege as the operator with 5 acres in the same field.* As further evidence that Section 4 is concerned with markets and not with proportionate taking, the Commission is authorized 'to prevent unreasonable discrimination in favor of any one such common source of supply as against another,' which must mean that the Commission is authorized to prorate markets because we can not attribute to the Legislature the absurdity involved in an authorization to the Commission

to prohibit, for instance, the Oklahoma City field from draining the Seminole field or the Tonkawa field, separated by many miles and shown by the undisputed evidence to be incapable of draining any other field.

"Severing Section 2 from the Act and declaring or conceding its unconstitutionality does not take it out of the Act when we come to ascertain the legislative intent. An unconstitutional law or part of a law may be considered in order to ascertain the intent of the Legislature in another law or a part of the same law. *Lewis' Sutherland Statutory Construction,* 2nd ed., vol. 2, sec. 452.

"The Illinois Supreme Court in *Baird* v. *Hutchinson,* 179 Ill. 435, 53 N. E. 567, said, 'The meaning of the Legislature must be gathered from all they have said, as well from that which is ineffective from want of power, as from that which is authorized by law.'

"Mr. Justice Van Devanter, in *Davis v. Wallace,* 257 U. S. 478, 66 L. Ed. 325, 42 S. C. 164, applied this rule and said that:

" 'Where an excepting provision in a statute is found unconstitutional, courts very generally hold that this does not work an enlargement of the scope or operation of other provisions with which that provision was enacted and which it was intended to qualify or restrain.'

"The Court in that case also held that declaring a section of a statute unconstitutional 'does not make the provisions any the less a key to the intention of the legislature.'

"Section 2 permeates the whole statute. It is the foundation of the statute and without it Sections 3 and 4 are too vague and uncertain to vest any power in the Corporation Commission to make the rules and regulations assailed in this

case. *The Act nowhere undertakes to vest the Corporation Commission with power to define waste.* See *Hewitt* v. *Board of Medical Examiners,* 148 Cal. 590, 84 Pac. 39; *Cline* v. *Frink Dairy Co.,* 274 U. S. 445, 71 Law Ed. 1146.

"As shown by the Commission's various orders from June 30th, 1930, down to date, it has purported to find a market demand for the entire State of Oklahoma, and then no doubt acting under the last clause in Section 4 of the Act, allocated those markets between various fields, a thing I do not believe the Legislature can constitutionally authorize, *as it in effect takes one man's market and gives it to another.* In the Commission's order of June 30th, 1930, it found that the existing wells in Oklahoma following the 1st day of July would produce approximately 1,362,000 barrels per day and 'That the daily demand in Oklahoma is and will be approximately 650,000 barrels per day during the months of July, August and September, 1930.' In the decretal part of the order it distributes this market among the various fields, naming them in a schedule setting forth their estimated potential and estimated actual production. This same scheme was followed in the succeeding orders. The Commission in finding that the market demand in Oklahoma for certain months was a certain number of barrels evidently meant a market at the posted price, the then existing price, and not a market at a lower price. It is true that there may not be a market for more than 650,000 barrels per day at $1.07 a barrel, whereas, there may be a market for one million barrels per day at 75 cents per barrel.

"Collins, umpire for the state at large, testified that although he did not make recommenda-

tions upon which the Commission assigned market demand in the Oklahoma City field for the month of January, 1931, he did make recommendations for the Seminole and the balance of the state, and that although he had nothing to do with assigning market demands to the respective fields he made recommendations to the Commission. On re-examination Collins testified that he tried to get an increase of the market demand for the Oklahoma City field but that in doing so he never considered the price; that he never tried to get a market at a price below the posted price because it would be nearly impossible to find a seller, and that he had *never considered it his business to try to get any market below the market price,* all of which goes to show that the Commission's so-called findings of market demands were based on a finding of the ability to sell at the then posted price and not at a lower price." (Italics ours.)

(NOTE: For Collins' testimony referred to by Judge Kennamer, see R., vol. 1, pt. 2, p. 294.)

In his dissenting opinion Judge Kennamer cuts through form and penetrates the very body and soul of the Act in the following unanswerable reasoning (R., vol. 1, pt. 2, p. 243) to wit:

"In view of the fact that the Oklahoma Act does not (*a*) take into consideration acreage, or (*b*) prohibit the use of pumps to create an excessive flow of oil, or (*c*) closing offset well or wells when a stoppage of an adjoining operator's well is caused by losing the casing or other accident, or (*d*) make any provisions for equitable taking except 'where the full production from any com-

mon source of supply of crude oil or petroleum * * * can only be obtained under conditions constituting waste,' which must mean where there is not a sufficient market at a fixed price for all the oil, I conclude that the Act and the orders of the Commission made in pursuance thereof were intended to accomplish one result and that is price fixing by regulating the law of supply and demand by statute and rules of the Commission."

(e) Even if Section 2 of the Act is wholly disregarded as unconstitutional then the remaining portions of the Act are too uncertain and indefinite to confer upon the Commission the power and authority it seeks to exercise through its rules and regulations, in that the Act does not define economic waste or waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands, and does not confer authority upon the Commission to define such waste, and if it does confer such authority then it is void because in violation of Section 1 of Article 4 of the State Constitution dividing the powers of government into three separate departments, and Section 1 of Article 5 of the State Constitution vesting the legislative power in the Legislature.

(NOTE: See 2nd Assignment of Errors, R., vol. 1, pt. 2, p. 380.)

Hewitt v. *Board of Medical Examiners*, 148 Cal. 590, 84 Pac. 39;

Ex Parte Peppers, 186 Cal. 682, 209 Pac. 896;

Patten v. *Aluminum Castings Co.*, 135 Ohio St. 1, 136 N. E. 426;

Smith v. *Cahoon*, Sheriff, 283 U. S. 553;
Connally v. *General Construction Co.*, 269 U. S. 385;
United States v. *Capitol Traction Co.*, 19 Ann. Cas. 68;
Cline v. *Frink Dairy Co.*, 274 U. S. 457;
United States v. *L. Cohen Gro. Co.*, 255 U. S. 81;
Weeds v. *United States*, 255 U. S. 109;
International Harvester Co. v. *Kentucky*, 234 U. S. 216;
Collins v. *Kentucky*, 234 U. S. 634;
Atlantic Refining Co. v. *Trumbull*, Governor, 43 Fed. (2d) 154;
Chicago & Northwestern Ry. Co. v. *Railroad Commission*, 280 Fed. 398;
City of St. Paul v. *Schleh*, 101 Minn. 425, 112 N. W. 532;
Wasem v. *City of Fargo*, 49 N. D. 168, 190 N. W. 546;
Ex parte Jackson, 45 Ark. 158;
The Schooner Enterprise, 1 Paine (C. C.) 32.

Although the highest state court having jurisdiction (*State* v. *Tibbetts*, 21 Okla. Crim. 168, 205 Pac. 776) had sustained the constitutionality of the Act there involved as sufficiently definite, this court, in *Connally* v. *General Construction Co.*, 269 U. S. 385, refused to follow the state court decision and held the Act void for uncertainty.

Great Southern Fireproof Hotel Co. v. *Jones*, 193 U. S. 532, 48 L. Ed. 779.
Burgess v. *Seligman*, 107 U. S. 20, 27 L. Ed. 359.

(f) Assuming that Section 2 of the Act is severable, the Act is nevertheless unconstitutional for the reason that Section 3 thereof is plainly for the purpose and has the necessary effect of authorizing an agency of the State to control prices for the benefit of a particular class,—the oil producers.

Section 3 accomplishes this result by authorizing the curtailment of production to that "market demand" which the Commission shall find to be "reasonable."

There are only three factors in any market: (*a*) supply, (*b*) demand, and (*c*) price.

All are interdependent, and the control of the first two of these factors, necessarily means control of the price.

In other words, the market demand at one price will be different from the market demand at another price. For example, when a field is first discovered and produces only a few thousand barrels per day, the price remains stationary. If its production should mount to 200,000 barrels per day, the competition between sellers becomes keener and the price drops. If the production mounts to 400,000 barrels per day, competition becomes still keener and the price drops still further, and if production mounts to 600,000 or 700,000 barrels per day, the price must drop again to attract buyers for the commodity. Every *production level* has its corresponding *price level* and any *agency which has the power to select the production level* must necessarily have as incident thereto, the power to select the corresponding price level.

It is clear also that when "reasonable market demand" is made the sole criterion with which to measure the extent of curtailment, the purpose thereof must be to keep a controlling hand upon the price level. This is not a situation where the supply is being incidentally affected. A State *agency* has deliberately set out to control those factors which control price. As the result thereof, the hand of this *agency* at the behest of the principal oil companies operating in the State, is firmly upon the valve which controls prices. A turn of the wheel in the direction of increased production would almost immediately result in lower prices, and conversely, a constant turning of the wheel in the direction of decreased production must necessarily mean a consequent increase in prices.

As an economic proposition it is clear that any agency which has control of the market demand and is empowered to limit production to what is determined to be market demand, thereby has effective, absolute and constant control over the price.

(g) Even if proration of production, to meet market outlet, could be justified under the 14th Amendment, the basis of such proration in the instant case is clearly inequitable, and involves a taking without due process of law, and is a denial of the equal protection of the laws.

In discussing this point we wish to *emphasize the fact* that we do not concede that any form of proration of production to market outlet can be justified. But if the Court does not sustain that point (which would dis-

pose of the case) we then respectfully contend that if proration is to be recognized as a State governmental right, that it must at least be based upon considerations of equity and even-handed justice.

The theory of proration to meet an insufficient market outlet necessarily presumes a proportionate right to such market. Such a conception is foreign to our jurisprudence, and that of the English speaking race. *There is no such thing as a right to a market.* The only right which anyone has to a market is that which is due to his skill, industry, foresight and capital, and that must be protected by the working of natural forces. The decisions of the English speaking world could be searched in vain for any recognition of a principle to the contrary, and it is this fact that makes the scheme of proration invalid *per se.*

But if proration is to be recognized in this case, there must be an equitable system invoked for the measurement of the relative equities which competing producers would have in a market which is *insufficient for all.* The method of proration in this case is to prorate production according to an assumed potential capacity to bring oil to the surface. Obviously the ability to bring oil to the surface is no reasonable measure of any assumed right to a proportionate share of the market, for such proportionate share must necessarily depend, if it be recognized at all, upon the facilities which each competitor has to find a market for his products.

It is easy to show the inevitable injustice to which the present scheme of proration would lead, and the illustrations we give are the facts in the instant case.

Take two competitors, one of whom has existing contracts for all his products, and the other without contracts whatsoever. The plaintiff in this case is in the first position, for it has an abundant use for all the crude oil that it can produce—without waste—and with its facilities has no difficulty in getting a market for all its production. The result is that having had the industry to create a market the plaintiff is now obliged to divide that market, or at least a portion of it, with those who either are without a market, or at least without an adequate market for their products. Moreover, the facts in this case show, as further illustrating the injustice of the situation, that plaintiff with an abundant capacity for production of crude oil in its wells, ample for the needs of its refinery, and with an ample market demand for its products, is actually obliged, in the practical working of these proration orders, to buy both crude oil and gasoline from the very competitors who, in the manner hereinbefore described, have imposed this unjust system upon it.

Plaintiff is the owner of oil wells (in the Oklahoma City field) with capacity to produce without physical waste (under the most rigid regulation) all the oil its refinery requires, to be in turn manufactured into gasoline and by-products, for sale to its trade—that is, to the market, built up over a long term of years by large investments in the refinery, marketing facilities, pipe lines, filling stations and wholesale distributing plants throughout Oklahoma and many other States. Said another way, plaintiff, by hazardous investment of large capital, has created for itself a market for all

the refined products its refinery is producing, and, to supply its refinery's needs, has invested large sums in oil leases. Crude oil in its natural state is practically without value, because there is no use for it until it is made possible of utilization by manufacture. When compelled to go on a proration basis, and close its producing wells to a ridiculously low percentage of capacity, its producing properties, under the Commission's orders, would not meet one-twentieth of its refinery demands.

To keep its refinery going, which is necessary to maintain its market, it is compelled to purchase crude oil from other producers known as *non-integrated* (as hereinafter more fully identified and classified) operators, and thus share with such non-integrated producer the plaintiff's markets without any compensation to the plaintiff therefor. In other words, proration confiscates a proportion of plaintiff's markets, for the benefit of competing producers.

It is obvious that mere production of crude oil from the depths of the earth to the surface does not measure the relative capacity of different producing competitors to find a market for their products. The production of oil is but an incident. Its chief use is in the manufacturing process of refining and selling *it* in the form of gasoline. As between different competitors there is a manifest difference in the ability of each to get a market, if the law left the matter to the natural forces of competition.

The broadest classification between different competitors in this respect is between the integrated and

non-integrated producer. The non-integrated producer brings his crude oil to the surface and expects to find (or have the state create) a market at the mouth of the well. His only facility for getting such a market is a *demand* by those who will purchase at the well. The integrated producer has far greater facilities for finding a market. When it brings oil to the surface and is without an immediate purchaser at the well, it may store such crude oil in tanks, or employ its pipe line for swift transportation to the markets of the industry, or may utilize its refinery in which it will convert such crude oil into gasoline and other by-products; or, having procured railroad tank cars with which to transport such crude oil, or the gasoline derived therefrom to distant markets where there will be an adequate demand; or may utilize its filling stations in which it can readily market to the consuming public the crude oil as changed into gasoline.

Is it not then a manifest injustice to level the integrated producer, who has invested millions in these facilities for the creation of a market, to the non-integrating producer, who has failed to provide such facilities. Prorating in proportion to the production of crude oil necessarily means the destruction, *pro tanto*, of all the superior facilities that the ability, foresight, business genius and capital of the integrated producer has so created.

For example: A well may be sunk and oil found at a cost of $150,000. The producer then has no more than the ability to sell his market *at the well.* He is without storage tanks against market demand, and

therefore is obliged to sell without delay, or stop the production of his oil. The integrated producer may have ten millions invested (not only in the mere sinking of wells) in the storage tanks, pipe lines, tank cars, refineries, filling stations, etc. Moreover, one man may have embarked in the business but yesterday, while another may have established by years of patient industry and frugal management, a good will which gives in return a full market, irrespective of the ability of the less fortunate producers to find a like market. All the right of superior industry and capital to the markets that have been thus earned are *nullified* by a purely artificial and arbitrarily unreasonable basis of proration.

It may be suggested by defendants that this Court will not consider whether one method (of curtailment) is wiser than another, but should leave that to the legislative discretion of the State. Such suggestion does not apply to methods, one of which is *unjust* and the other *just*. If it be clear that a more equitable recognition of these assumed rights to a proportionate part of the market means even-handed justice, and one method employed works a palpable and inevitable injustice, then this Court, under the benign provisions of the 14th Amendment, will insist that, whatever method may be adopted by the Legislature of the State, must be one based upon a broad consideration of relative equities.

If we be asked what different or other method of curtailment could be devised, we must answer that we need only show that the method *adopted* is

inherently unjust. However, we meet the challenge by suggesting that if the scheme of proration is to be recognized as a valid exercise of legislative power, in measuring relative rights to a market, such scheme must be based upon the consideration of capital investment in meeting the demands of the market. If, therefore, the Corporation Commission had valued the relative investments of different competitors in Oklahoma, and had said that each was entitled to a market in proportion to his capital investment in the facilities for meeting the market, something could be said for the fairness of thus apportioning markets, although its objectionable price fixing character would remain.

However, as before stated, we are not obliged to suggest another method of proration and can surely rest our case upon the broad proposition that the basis of proration, in the practical administration of this law, involves the signal injustice of putting the man who has risked large capital investments upon the same level with the man who invested small capital; one who has a long established good will upon the same level with the man who is without good will at all; one who has invested in all the facilities incident to the creation of a market on the same level with the man who is without facilities of any kind for the meeting of the market.

If this Court shall decide to cross so fateful a Rubicon as the recognition of any scheme to prorate markets, then at least the method of proration must not rob Peter to pay Paul.

THE ORDERS (RULES AND REGULATIONS) OF THE CORPORATION COMMISSION ARE UNCONSTITUTIONAL.

The Commission Has Administered the Act in an Unconstitutional Manner.

Looking through form to substance, this Court has always denied the right of any legislative or administrative agency to deprive any citizen of his property in order to give effect to enactments which (a) have for their purpose the aiding of a particular class, or (b) which adopt means not reasonably necessary to the accomplishment of any public purpose.

Lawton v. *Steele*, 152 U. S., 133; 38 L. Ed., 385.

In the case of *Dobbins* v. *Los Angeles*, 195 U. S. 235, 49 L. Ed. 175, this Court held unconstitutional an ordinance of the City of Los Angeles making it unlawful to erect a gas plant in a certain section of the city, on the ground that the extrinsic circumstances showed that said ordinance was not enacted in good faith as a zoning ordinance, but was enacted to prevent a plant from being built in competition with the company holding the gas monopoly.

As *corroborative* of the unlawful purpose of the rules and regulations herein complained of, we submit that the origin of the orders throws light upon their purpose. After the orders of 1914 hereinafter referred to (Appendix A, page 145), curtailment and proration were not attempted in Oklahoma until 1926, when the discovery of the Great Seminole field threat-

ened the price level of crude oil. At that time the large companies operating in the Seminole field entered into a voluntary agreement to curtail their production. Later this voluntary agreement was approved by the Corporation Commission, and as an outgrowth of these orders came the present orders of the Corporation Commission. As admitted by Mr. German, Counsel for Defendants (R., vol. I, pt. 2, p. 280):

> "In 1926 there was proration by agreement in the Seminole field; in 1927 proration by orders of the Corporation Commission, and it has been that way ever since except for some small intervening periods, and beginning in 1927 he (Ray Collins) was appointed by the Corporation Commission as Umpire.
>
> "Mr. Glasser: Is counsel testifying?
>
> "Cotteral, J.: He is making an admission.

The fact that the present proration was born in voluntary agreements is highly significant. When the wolf is in the sheep-fold, the farmer does not have to take evidence to determine his purpose there. Similarly, in these days of strenuous competition, when all corporations, including oil companies, are striving for profits, it does not require evidence to determine the purpose of a voluntary curtailment agreement. This is even more true in periods when overproduction is threatening price structure.

The Corporation Commission has ascertained and computed the "reasonable market demand" and "reasonable transportation facilities" to which it limited the production from the State, by merely receiving from the pipe line companies which had connections

in each field, the volume of crude oil which such pipe line companies "nominated" to run and purchase during the period fixed within each of said orders.

The Umpire, Mr. Collins, testified that when the proration system was inaugurated in the Seminole field, the committee of the operators who had agreed to the curtailment

> "petitioned that the Seminole pool be prorated to the *outlet.*" (R., vol. I, pt. 2, p. 282.)

that he had testified before the Corporation Commission that

> "he was not interested, as far as the public was concerned." (R., vol. I, pt. 2, p. 288.)

that in fixing the allowable run in the Seminole field

> "the purchasing companies in the Seminole area were asked to and did make their nominations as to *the amount they would take out* of those fields." (R., vol. I, pt. 2, p. 290.)

For the entire State the witness testified

> "that the recommendation which the witness takes to the Corporation Commission for the assignment of so-called market demand over the State, is predicated upon data and information which is obtained from these men at the heads of these pipe line companies; that since January 1st, 1931, all of the purchasing companies in the State are subpœnaed by the Corporation Commission to appear before the Corporation Commission and *the nominations* are there made directly to the Corporation Commission." (R., vol. I, pt. 2, p. 290.)

The witness testified further

> "that an effort to get a market below the posted price was never attempted because it would be practically impossible to find a seller; that the witness has never considered price in any way in attempting to get a market, but that he has never tried to get a market below market price." (R., vol. I, pt. 2, p. 294.)

also

> "the amount of the allowable production in each pool corresponded to the *current demand* for crude oil from such pool; and the same thing is true in the case of each of the orders." (R., vol I, pt. 2, p. 298.)

Speaking of the Oklahoma City field in its order No. 5413 of December 30, 1930, the Commission said:

> "* * * On the basis of the potential production of the field now reported to the Commission of 5,388,298 barrels per day, the temporarily *nominated* outlet of 85,000 barrels per day will require a proportional taking of 1½% from the potential production of each well or lease. * * *" (R., vol II, pt. 2, p. 178.)

All of the foregoing conclusively shows that the whole theory in fixing market demand was, that competition in the purchasing of oil should be eliminated and the *status quo* maintained.

No scientific investigation is made as to the amount which each well might produce (as within the California gas-oil ratio law), in the interest of the greatest possible recovery of oil with the least waste of gas energy.

The statement of the Commission in Order No. 5189 (R., vol. II, pt. 2, p. 93) to the effect that the arrangement "was agreed to" by all producers and purchasers (save one) is of the essence of the whole scheme.

Immediately following the *en banc* announcement by the Corporation Commission of March 4, 1931, that the allowable production from the Oklahoma City field should be raised from 125,000 barrels per day to 150,000 barrels per day (the Stanolind Crude Oil Purchasing Company, a subsidiary of the Standard Oil of Indiana), one of the principal purchasers of crude oil within the State of Oklahoma, at once lowered its posted price for crude oil purchased within the State from $1.07 per barrel to 67¢ per barrel, and that on March 5, 1931, upon the written request of the Governor of Oklahoma, the Corporation Commission, without further hearing, immediately rescinded its announcement of March 4, 1931, thereby determining the production of oil upon the caprice of the Governor and the cut in price (by the Stanolind Crude Oil Purchasing Company). (R., vol. I, pt. 1, p. 18; vol. II, pt. 2, pp. 231-233.)

(a) UMPIRES AND OPERATORS' COMMITTEE.

(1) Assuming the Commission had authority to appoint Collins and Bradford umpires, nevertheless, the Commission had no authority to delegate to Collins and Bradford, or to either of them and the Operators' Committee, any jurisdiction of a discretionary nature, and all the rules and regulations undertaking to vest any powers in Collins and Bradford other than purely clerical and ministerial, are void, and consequently the Com-

mission's rules vesting Collins and Bradford with jurisdiction over gauges and the amount of oil to be run by any operator are void because they involve the exercise of judgment and discretion. (26th Assignment of Error, R. vol. 1, pt. 2, p. 386.)

This proposition seems to be fundamentally true.

Ontario Knitting Co. v. *State*, 205 N. Y. 409, 98 N. E. 909;

State v. *Apalachicola No. R. Co.*, 81 Fla. 394, 88 So. 310;

Moore v. *Wilson*, 84 Kan. 745, 115 Pac. 548;

Gaddis v. *Cherokee County Road Commission*, 195 N. C. 107, 141 S. E. 358;

New York Cent. R. Co. v. *Public Service Com.*, 134 N. E. 282 (Ind.);

Throop on Public Officers, Secs. 569 to 573, inc;

Mechem on Public Officers, Sec. 567; 46 *C. J.*, p. 1033.

The very fact that the Commission undertook to vest the Umpires and the Operators' Committee with discretionary powers conclusively shows that the Commission was a mere tool of the operators and not functioning within its jurisdiction. It must be admitted that the Commission could not delegate any authority to the Operators' Committee because the Operators' Committee's appointment was not approved by the governor as required by Section 5 of the Curtailment Act.

Section 2 of the decretal part of the Commission's order of June 30th, 1930 (R., vol. 2, pt. 2, p. 95), provides:

"Ray M. Collins is hereby appointed as Umpire and Agent of the Corporation Commission

to enforce the rules and regulations herein made, and he is hereby authorized to employ as many assistants as he shall deem necessary. To assist the Umpire in administering these rules and regulations, the following Committees of Operators are appointed as agents of the Corporation Commission for the following named pools respectively:"

(Here follows names of the committees.)

In that same order the Commission found (R., vol. 2, pt. 2, p. 94):

"(k) *That the Umpire and Operators Committee are authorized to fix, from time to time, the rate of curtailment necessary in said area in order to conform the actual production to the actual demand from that area, with a maximum allowance of 25% of potential; it being understood, however, that whatever demand there is from the Oklahoma City pool shall be prorated among all of the producing leases therein.*

"(l) With reference to East Earlsboro, the Corporation Commission finds that * * * the *Umpire and Operators Committee shall have authority to readjust the percentage* so that a minimum production of 20,000 barrels per day from the pools as a whole shall be allowed."

In that same order (R., vol. 2, pt. 2, p. 98) the Commission found:

* * * "*In case the reasonable market demand (in the Oklahoma City pool) shall at any time be less than 25% of the potential production the Umpire and Operators' Committee*

shall fix such percentage of potential production as will allow a production equal to said reasonable market demand. * * *

"Then and in that event the Umpire and Operators' Committee shall fix a percentage of potential production (in the East Earlsboro pool) which will allow the pool as a whole to produce a minimum of 20,000 barrels per day."

The Commission, in its order of August 30th, 1930, (R., vol. 2, pt. 2, p. 116) retained jurisdiction and ordered the Umpire and Operators' Committee to report "any adjustment or fixing of percentages or well production," etc., but the Operators' Committee and the umpires still retained their discretionary powers conferred by former orders.

The Commission's order of October 28th, 1930 (R., vol. 2, pt. 2, p. 134), provided:

"* * * the Commission therefore finds that the orders, rules and regulations should be made sufficiently flexible so that increases or decreases in market demand from said Oklahoma City pool and increases or decreases in potential production therefrom, can be recognized by ancillary orders of the Commission, and that for this purpose the Umpire and Operators' Committee should be instructed to compute from time to time, the rate of curtailment necessary in order to conform the permitted production to the reasonable market demand from the said Oklahoma City pool and to report the same to the Commission with the facts in support thereof as a basis for such ancillary order."

In that same order (R., vol. 2, pt. 2, p. 139) the Commission found:

> "*The production so shown shall constitute the potential for said lease until the next gauge is taken.* During the time this Order is in force a similar gauge of each property shall be taken from time to time as the Umpire and Operators' Committee may designate but not less than once each month, except that in the entire Greater Seminole area, aside from South Earlsboro, East Earlsboro, East Little River, Sasakwa, Konawa, West Asher-Wanette, Earlsboro Townsite and Wilcox wells in Allen pools, and in the 'Class A' pools, the gauge *may, upon direction of the Umpire,* be determined by applying the proper decline curve for each lease so gauged."

and also (R., vol. 2, pt. 2, p. 140) provided therein:

> "The Commission may, by ancillary order, temporarily reduce the allowable percentage of production for any pool upon the *recommendation of the Umpire and Operators' Committee* that it is necessary to do so in order to allow producers who may be underproduced to catch up with their respective quotas."

In the decretal part of the order of October 28th, 1930, the Commission found (R., vol. 2, pt. 2, p. 146):

> "Should the demand for crude oil from the State of Oklahoma increase prior to December 31, 1930, to such an extent as to permit a greater outlet from the pools herein mentioned, the Umpire shall report the facts to the Commission, together with the recommended percentages, and the Corporation Commission hereby gives notice that such revised percentages may be substituted for the percentage provided for in this order."

In the Commission's order of December 30th, 1930 (R., vol. 2, pt. 2, p. 183), it is provided:

> "Then the corrected potential of such well for said current potential period shall be *agreed on by the operator of such well, the Umpire and the majority of the Operators' Committee,* and in the event they are unable to so agree, the Umpire shall immediately refer the matter to the Corporation Commission for determination, and pending final determination by the Corporation Commission, the corrected potential of such well for such current potential period *shall be that fixed by the Umpire and a majority of the Operators' Committee.*"

In the Commission's order of May 29th, 1931 (R., vol. 2, pt. 2, p. 213), it is provided:

> "The *Umpire shall permit to be supplied any reasonable market demand* over and above the reasonable market demand necessary to take care of the percentage of production provided in the preceding paragraph hereof, but shall from time to time allot the same to the under-produced and under-run wells."

The Commission also expressly retained jurisdiction.

In the Commission's order of June 27th, 1931 (R., vol. 2, pt. 2, p. 214), we find exactly the same provision as above quoted.

In *State* v. *Apalachicola Northern R. Co.*, 81 Fla. 394, 88 So. 310, the Court said:

> "But the statute does not give the board power to confer upon an employee authority to make rules or regulations, *nor to determine when rules*

or orders of the board shall or shall not be applicable. Under the statute the board, not the Plant Commissioner, must determine when the 'danger of the dissemination of such insect pests or disease has ceased' and the board, not the Plant Commissioner, must give notice of such determination. Such a rule could not be valid for the reason that authority to determine its applicability in a given case, or that the necessity for its continuance in force had ceased could not be delegated by the board to the Plant Commissioner. In attempting to delegate this authority to the Plant Commissioner the respondent State Plant Board went beyond its statutory power; its action was to that extent therefore, unauthorized, and the rule complained of was without authority and is void."

(2) **The Legislature had no power to delegate authority to the Commission to create the office of Umpire and prescribe the qualifications and duties thereof and arrange for his salary, and if Section 5 of the Curtailment Act is construed to vest that authority in the Commission, it is void under Section 1 of Article 4 and Section 1 of Article 5 of the Oklahoma Constitution, questions neither raised, discussed nor passed upon by the Oklahoma Supreme Court in the Julian decision. (25th Assignment of Error, R. vol. 1, pt. 2, p. 386.)**

Evidently this proposition will not be disputed.

State ex rel. Young v. *Butler,* 105 Me. 91, 24 L. R. A. (N. S.) 744;

State v. *Smiley,* 304 Mo. 549, 263 S. W. 825;

In re County Commissioners of Counties Comprising Seventh Judicial District, 22 Okla. 435;

Gilhooly v. *Elizabeth,* 66 N. J. L. 484, 49 Atl. 1106;

King v. *Concordia Fire Ins. Co.,* 140 Mich. 258, 6 Am. & Eng. Ann. Cas. 87;

Ploner v. *Standard Oil Co.* (7th Cir. Ap.), 284 Fed. 35;

Sec. 1, Art. 6, Oklahoma Constitution;

Sec. 36, Art. 5, Oklahoma Constitution;

Sec. 1, Art. 4, Oklahoma Constitution.

(3) The payment of salaries by the Operators' Committee to Collins and Bradford is against public policy, and vitiated all their alleged official acts. (28th Assignment of Error, R. vol. 1, pt. 2, p. 387.)

The trial court *excuses* the Commission's appointment of Collins and Bradford and the payment of their salaries and expenses by private oil operators interested in dominating their acts by saying the Legislature had made no special appropriation for the enforcement of this act and that "while this method of compensating agents of the Commission is calculated to breed suspicion and distrust and destroy confidence in the integrity of the Commission, the evidence does not establish that such agents and employees of the Commission have been guilty of favoritism or dishonesty," etc. (R., vol. 1, pt. 2, p. 207), which is contrary to the highest authority (3rd verse of Chapter 1 of the Prophet Isaiah) wherein the Prophet said, "The ox knoweth his owner, and the ass his master's crib," and in violation of the rule announced in the 24th verse of Chapter 6 of St. Matthew

that "No man can serve two masters, for either he will hate the one and love the other, or else he will hold to the one and despise the other. Ye cannot serve God and mammon."

Why did the Commission fail to put the administration of this act and its rules and regulations in the hands of its *"chief oil and gas conservation agent,"* authorized by the Act of 1917, and for whose salary and expenses the Legislature has appropriated large sums from 1917 down to date?

By Act approved February 16th, 1917 (House Bill No. 136, p. 385, Okla. Session Laws, 1917, Sections 8013 and 8014, Okla. Comp. St. 1921, a copy of which will be found in Appendix "F" (page 193), the Legislature "empowered and authorized" the Corporation Commission "to create and establish an oil and gas department under the jurisdiction and supervision of the Corporation Commission" and authorized the Commission "to appoint, with the approval and consent of the Governor, *a chief oil and gas conservation agent*, who shall have charge of the oil and gas department herein authorized." Also, by Section 2 of the Act, "All authority and duties now conferred upon the Corporation Commission or other departments of the state government in reference to the conservation of oil and gas and the drilling and operating oil and gas wells and the construction and regulation of oil and gas pipe lines, are hereby conferred exclusively upon the Corporation Commission."

The constitutionality of the above act was upheld in *Love* v. *Boyle*, 72 Okla. 300.

Section 6 of the Act repealed "all acts and parts of acts in conflict herewith," and thereby displaced any power, if any ever existed, in the Commission under Section 5 of the Curtailment Act to appoint or employ umpires to supervise the conservation of oil and gas.

For each year from and including 1917 to and including the fiscal year ending June 30th, 1933, the Legislature has made substantial appropriations to the *"Corporation Commission"* for the expenses of enforcement of the oil and gas conservation laws and salaries of conservation officers and their assistants.

The following Acts made the following appropriations:

(1) House Bill No. 570, Session Laws 1917, p. 285	$135,000.00
(2) Chapter 183, Extra Session Laws 1921, p. 200	70,000.00
(3) Chapter 49, Session Laws 1923, pp. 60-73	83,400.00
(4) Chapter 51, Extra Session Laws 1923-24, p. 63	43,700.00
(5) Chapter 66, Session Laws 1925, pp. 98-109	111,000.00
(6) Chapter 27, Session Laws 1927, pp. 27-37	78,000.00
(7) Chapter 233, Session Laws 1929, pp. 278-279	128,000.00
(8) Senate Bill 63, Session Laws 1931, p. 300	123,000.00
Total	$772,100.00

Thus, for the period since 1926 when proration was begun in the Seminole field, and down to date the Legislature has appropriated for oil and gas conservation $384,000.00.

The Commission at all times knew that Collins and Bradford were receiving their salaries and expenses from large interests engaged in the oil business, and that Collins' annual salary so paid was twice the combined official salaries of the three Commisisoners. Such conduct is clearly against the public policy of Oklahoma, as shown by the Oklahoma statutes, and constitutes a dubious and dangerous alliance between government and big business.

Section 1 of Article 15 of the Oklahoma Constitution requires members of the Legislature and all judicial, state and county officers, "before entering upon the duties of their respective offices," to take and subscribe to an oath or affirmation that they "will not, knowingly, receive, directly or indirectly, any money or other valuable thing, for the *performance* or non-performance of any act or duty pertaining to" their office, "other than the compensation allowed by law."

Section 126, Okla. Comp. St. 1921, requires this oath to be taken by "every state, county, township, city, town, school district, or other officer * * * and *every deputy or assistant of any such officer* * * * before entering upon the duties of his office."

The following Oklahoma statutes clearly show that the acceptance of compensation from private persons is against the fixed public policy of Oklahoma:

"Sec. 1561. Any person who executes any of the functions of a public office *without having taken and duly filed the required oath of office,* or without having executed and duly filed the required security, is guilty of a misdemeanor; and in addition to the punishment *prescribed* therefor, he forfeits his right to the office."

"Sec. 1569. Any executive officer who asks or receives any *emolument,* gratuity or *reward,* or any promise of any emolument, gratuity or reward, excepting *such as may be authorized by law,* for doing any official act, is guilty of a misdemeanor."

"Sec. 1570. Any executive officer who asks or receives any emolument, gratuity or reward or any promise of any emolument, gratuity or reward, for omitting or deferring the performance of any official duty, is guilty of a misdemeanor."

Sec. 1573. Any person who gives or agrees, or offers to give any gratuity or reward in consideration that himself or any other person shall be appointed to any public office, or shall be permitted to, or to exercise, perform or discharge the prerogatives or duties of any office, is punishable by imprisonment in the county jail not less than six months nor more than one year, or by a fine of not less than two hundred dollars or more than one thousand dollars, or both."

These sections are made applicable to administrative officers by Section 1579, which is as follows:

"The various provisions of this article which relate to executive officers apply in relation to officers in the same manner as if administrative

and executive officers were both mentioned together."

Also the following Sections of the Oklahoma Comp. St. 1921, show the public policy of this State:

"Sec. 1609. Whoever corruptly gives, offers or promises to any executive, legislative, county, municipal, judicial or other public officer, or *any person assuming* to act as such officer, after his election or appointment, either before or after he has qualified or has taken his seat, any gift or gratuity whatever, with intent to influence his act, vote, opinion, decision or judgment on any matter, question, cause or proceeding which then may be pending, or may by law come or be brought before him in his official capacity, or as a consideration for any speech, work or service in connection therewith, shall be punished by imprisonment in the state penitentiary not exceeding five years, or by a fine not exceeding three thousand dollars and imprisonment in jail not exceeding one year."

"Sec. 1602. Any person who gives or offers to give a bribe to any judicial officer, juror, referee, arbitrator, *umpire* or assessor, or to any person who may be authorized by law or agreement of parties interested to hear or determine any question or controversy, with intent to influence his vote, opinion or decision upon any matter or question which is or may be brought before him for decision, is punishable by imprisonment in the penitentiary not exceeding ten years, or by a fine not exceeding five thousand dollars, or both."

"Sec. 1605. Any judicial officer, juror, referee, arbitrator or *umpire*, who accepts any gift from

any person, knowing him to be a party in interest or the attorney or counsel of any party in interest to any action or proceeding then pending or about to be brought before him, is guilty of a misdemeanor."

"Sec. 6329. The officers and persons herein mentioned shall be entitled to receive for their services only the fees and compensation herein allowed, and no other, except as may be otherwise required by law."

Section 6457, Okla. Comp. St. 1921, declares that "any public officer who shall knowingly charge, *demand or receive any fees not provided by law*, or who shall charge, demand or receive any greater fees than are hereby provided in this article shall be deemed guilty of a misdemeanor * * *."

"Contracts for the sale of offices are void as against public policy on the ground that they operate to interfere with the unbiased duty of public officers, and because of the serious dangers of bribery and corruption that would be incident to such a practice." (22 R. C. L. p. 538.)

Public policy renders void an assignment of the emoluments of office. (22 R. C. L., p. 541.)

The election of a public officer is invalidated by the promise of the candidate that if elected he will serve for less than the salary fixed by law.

State ex rel. v. *Collier*, 72 Mo. 13, 37 Am. Rep. 417;

State ex rel. v. *Purdy*, 36 Wis. 213, 17 Am. Rep. 485;

Lukens v. *Nye*, 156 Cal. 498, 105 Pac. 593, 36 L. R. A. (N. S.) 244;
State ex rel. Bill v. *Elting*, 29 Kan. 397;
Carrothers v. *Russell*, 53 Ia. 346, 36 Am. Rep. 222;
Bush v. *Head*, 154 Cal. 277, 97 Pac. 512;
Prentiss v. *Dittmer*, 93 Ohio St. 314, 112 N. E. 1021, L. R. A. 1917-B, 191;
Miller v. *United States*, 103 Fed. 415;
Somerset Bank v. Edmund, 76 Ohio St. 396, 11 L. R. A. (N. S.) 1171.

Why did the Commission repeatedly make findings of inflated and exaggerated potential production for the Oklahoma City field? The Commission, on February 10th, 1931, admitted that its former findings of potential for the Oklahoma City field, upon which markets were prorated, was more than three times the correct potential (R., vol. 2, pt. 2, pp. 203-204).

Collins also admitted (R., vol. 1, pt. 2, pp. 290-291) that while the Commission's findings of the potential production in the Seminole field and the balance of the State outside of Oklahoma City were correct, "the potential figures for the Oklahoma City field is 'just an exaggeration'" and that the percentages stated in Plaintiff's Exhibit 11 (R., vol. 2, pt. 1, p. 3) were not correct. Yet the Commission, in its order of February 10th, 1931 (R., vol. 2, pt. 2, p. 203), states that "the Umpire now estimates on this basis 6,254,964 barrels potential production" for the Oklahoma City field. Of course, the larger potential for the Oklahoma City field should have resulted favorably to the operators

in that field, but as a fact, under the Commission's regulations, it did not, as the Commission fluctuated the amount saleable out of that field from time to time without regard to the amount of production, and this is shown by the facts and figures above set forth.

What constitutes such discrimination as denies the equal protection of the laws guaranteed by the 14th Amendment is thoroughly outlined by Chief Justice Taft in *Truax* v. *Corrigan*, 257 U. S. 312; 27 A. L. R. 375, especially beginning on page 385. Also see the opinion of Justice Harlan in *Connolly* v. *Union Sewer Pipe Company*, 184 U. S. 540; 46 L. Ed. 679.

Chief Justice Taft, in *Truax* v. *Corrigan, supra*, approves the opinion of Mr. Justice Field in *Barbier* v. *Connolly*, 113 U. S. 27; 28 L. Ed. 923, holding that the Fourteenth Amendment intended "not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but that equal protection and security should be given *to all under like circumstances*, in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; * * * that no impediment should be interposed to the pursuits of anyone except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others *in the same calling and condition.*"

The Commission's rules and proration orders deny plaintiff the equal protection of the laws guaranteed by the Fourteenth Amendment. In that they classify the oil fields and allow a production of 50 per cent in

some of the fields, 100 per cent in other fields, 25 per cent in other fields, and less than 3 per cent in the Oklahoma City field.

A constitutional law unconstitutionally enforced entitles the plaintiff to an injunction. Thus in *Yick Wo* v. *Hopkins,* 118 U. S. 356, 30 L. Ed. 221-227, this Court said:

> "Though the law itself be fair on its face and impartial in appearance, yet, if it is *applied and administered by public authority with an evil eye and an unequal hand,* so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution. This principle of interpretation has been sanctioned by this Court in *Henderson* v. *Mayor, etc., of New York,* 92 U. S. 259 (Bk. 23, L. Ed. 543); *Chy Lung* v. *Freeman,* 92 U. S. 275 (Bk. 23, L. Ed. 550); *Ex Parte Va.,* 100 U. S. 339 (Bk. 25, L. Ed. 676); *Neal* v. *Delaware,* 103 U. S. 370 (Bk. 26, L. Ed. 267), and *Soon Hing* v. *Crowley* (*supra*)."

Also see *Wagner* v. *Covington,* 251 U. S. 102, 64 L. Ed. 167.

(b) GAUGES.

The Commission's order of June 30th, 1930 (R., vol. 2, pt. 2, pp. 85-96), prescribes the rule and method of gauging wells to be operated upon a percentage basis, as follows:

> "Where percentage proration is applied a gauge of producing wells shall be taken by the

Umpire or under his supervision in the following manner: the gauge to determine potential shall be taken by each operator in the pool in respect of the lease or leases owned by him therein and then producing, such gauge to be taken between the hours of seven A. M. on the day set by the Umpire and seven A. M. on the following day. Prior to the taking of such gauge and in respect of each producing lease covered hereby, the Umpire shall appoint a representative of an operator owning a lease adjoining the particular property to be gauged, and shall notify the operator whose property is to be gauged of the name of the representative, such notification to be given prior to the taking of such gauge. It shall be the positive duty of such representative to remain on the lease that is being gauged throughout the entire day that the gauge is being taken to witness the gauging of the production therefrom; and immediately upon the completion of such gauge, such witness and the operator whose property was gauged shall file a written statement with the Umpire showing the production of said lease, and of each well thereon for the day said gauge is taken. *The production so shown shall constitute the potential for said lease until the next gauge is taken.* During the time this Order is in force a similar gauge of each property shall be taken from time to time as the Umpire may designate, but not less than once each month, except that in the entire Greater Seminole area, aside from South Earlsboro, East Earlsboro, East Little River, Sasakwa, Konawa, West Asher-Wanette, Earlsboro Townsite and Wilcox wells in Allen pools, the gauge may, upon direction of the Umpire, be determined by applying the proper de-

cline curve for each lease so gauged." (Italics ours.)

This same rule has been kept in force and effect down to date. See Rule of August 30th, 1930. (R., vol. 2, pt. 2, pp. 108-116.)

See Rule of September 30th, 1930. (R., vol. 2, pt. 2, p. 117.)

On October 10th, 1930 (R., vol. 2, pt. 2, pp. 122-124), the Commission extended its orders until and including October 20th, 1930, and "until further order of this Commission."

On October 28th, 1930 (R., vol. 2, pt. 2, p. 124), by order in force at this time with certain modifications, the Commission re-adopted the method of gauging set forth in its order of June 30th. (See R., vol. 2, pt. 2, p. 138, paragraph 3.)

On November 8th, 1930 (R., vol. 2, pt. 2, pp. 151-153), the Commission extended its order of October 28th, 1930, over other oil fields, "provided, however, that the *Umpire and Operators' Committee* heretofore designated, selected and appointed for said area, be and they are hereby *authorized* upon application of the operator of any oil and gas lease in said area, and proper showing, to temporarily *exempt* from the terms and provisions of said Order any such lease where it is shown that the encroachment of water would injuriously affect the wells thereon, so as to prevent, rather than to aid, conservation of crude oil and petroleum."

On December 4th, 1930 (R., vol. 2, pt. 2, pp. 154-156), the Commission made another order regulating gaug-

ing on time proration, whereby each operator in the Oklahoma City field was allowed to produce four hours continuously (under the rule of November 3rd, 1930 (R., vol. 2, pt. 2, p. 149), and thereafter required to shut in his wells for 65 days, and for longer than that if he got more than his proportion of the oil, *according to his unofficial report,* not according to the report of any sworn official representing the state.

On December 30th, 1930 (R., vol. 2, pt. 2, p. 159), the Commission made an order modifying its former orders and purporting to prescribe rules for the production of oil during January, February and March, 1931, and again reiterated its method of taking gauges on the percentage basis. (See R., vol. 2, pt. 2, p. 171, paragraph 3.)

On that same day, December 30th, 1930 (R., vol 2, pt. 2, pp. 180-184), the Commission made another order regarding time proration. In other words, time proration was not based on the capacity of the well, but on the time the person was allowed to run his wells. • • •

> "(6) The Umpire shall appoint a representative *of an operator* who is in no way interested in the well to be tested to be present and witness the test being made of each well, and it shall be the duty of the representative so appointed by the Umpire to remain at the well which is being tested during the entire time the same is being produced for the purpose of determining its potential, and to witness all operations, tests for (bottom sediment) and/or water content, measurements and/or calculations made for the purpose of determining the actual production of

oil made by the well being tested during the test period as above defined. Immediately upon the completion of such test, the representative appointed by the Umpire and the representative of the operator shall file with the Corporation Commission, and a copy thereof with the Umpire, a written statement duly verified by both representatives on form to be approved by the Corporation Commission, showing the amount of oil produced by said well during the test period as above defined. (R., vol. 2, pt. 2, p. 184.)

"(7) In the event the Umpire's representative, and well owner's representative at the testing of the well, are agreed as to the daily potential of the well as determined by the test, the operator may continue forthwith to produce said well until there has been produced therefrom, including the amount produced during the test, the total allowable, to be calculated as hereinafter provided, for the current month. In the event the representatives of the Umpire and the well owner are not agreed as to the daily potential of any well, the well shall be shut in at the close of the test, and the matter referred to the Umpire. If the Umpire and the operator agree as to the daily potential of the well, the operator shall, thereupon, be permitted to produce the well until it has produced, including the amount produced during the test, its tentative allowable for the current month based upon the potential so agreed upon. If well owner and Umpire are unable to agree as to the daily potential of any well, the matter shall be referred to the Corporation Commission for determination, and, pending final determination

> by the Commission, the operator shall be permitted to produce the well until, on the basis above outlined, it has produced a tentative allowable for the current month calculated on the basis of the daily potential as fixed by the Umpire." (R., vol. 2, pt. 2, p. 185.)

If the operators making the gauge agree, the Commission accepts their finding, i. e., prorated production on the finding of private parties acting for themselves. (R., vol 1, pt. 2, pp. 202-203.)

Plaintiff therefore submits:

FIRST.

That without Section 5 requiring the Commission to gauge each well, Section 4, purporting to authorize proportionate taking, would be void under the Fourteenth Amendment in that it would delegate to the Commission an uncontrollable discretion and arbitrary power over all oil operators in the state—a power unlimited by any provisions of the statute and unascertainable by any oil operator. (See 21st Assignment of Error, R., vol. 1, pt. 2, p. 385.)

No such power was contemplated by the Legislature and therefore Section 5 appears in the Act.

In *Langford* v. *United States*, 101 U. S. 341-346, the first paragraph of the syllabus says:

> "The maxim, that the King can do no wrong, has no place in our system of constitutional law, as applicable either to the government or to any of its officers."

In *Garfield* v. *United States*, 211 U. S. 262, Mr. Justice Day said:

> "But, as has been affirmed by this court in former decisions, there is no place in our constitutional system for the exercise of arbitrary power," etc.

In *Welch, Insurance Com'r.* v. *Maryland Casualty Co.*, 47 Okla. 293, the court held an Act of the Oklahoma Legislature violated the 14th Amendment to the National Constitution in that it undertook to vest in the insurance commissioner "a discretionary and arbitrary power to license or to withhold a license from whomsoever he will" as an agent for a foreign insurance company in Oklahoma. This question was not submitted to or decided by the Oklahoma Supreme Court in the *Julian case*, 145 Okla. 237, 292 Pac. 841.

That sec. 4 would be void without sec. 5, see:

Yick Wo v. *Hopkins*, 118 U. S. 356, 30 L. ed. 220;

State ex rel. v. *Superior Court*, 12 A. L. R. 1428, and annotation;

Elkhart v. *Murray*, 165 Ind. 304, 1 L. R. A. (N. S.) 940;

Cicero Lumber Co. v. *Cicero*, 176 Ill. 9, 42 L. R. A. 696, 68 Am. St. Rep. 155;

Mayor, etc., of Baltimore v. *Radecke* (Md.), 33 Am. Rep. 239;

Noel v. *People*, 187 Ill. 587, 79 Am. St. Rep. 238, 52 L. R. A. 287;

Hays v. *Poplar Bluff*, (Mo.) L. R. A. 1915-D, 595;

Montgomery v. *West*, 149 Ala. 311, 9 L. R. A. (N. S.) 659;
Devereaux v. *Township Board*, 211 Mich. 43, 177 N. W. 967;
State v. *New Orleans C. & L. R. Co.*, 49 La. Ann. 1571, 39 L. R. A. 618;
City of La Junta v. *Heath*, 38 Colo. 372, 88 Pac. 460;
Richmond v. *Dudley*, 129 Ind. 112, 28 Am. St. Rep. 180;
Cutsinger v. *City of Atlanta*, 142 Ga. 555, L. R. A. 1915-B, 1097;
Boyd v. *Board of Council*, 117 Ky. 208, 111 Am. St. Rep. 240;
Bear v. *City of Cedar Rapids*, 147 Ia. 341, 27 L. R. A. (N. S.) 1150;
Mandeville v. *Band*, 111 La. 806, 35 So. 915;
Goodale v. *Sowell*, 62 S. C. 516, 40 S. E. 970;
City of Richmond v. *Model Steam Laundry*, 111 Va. 758, 69 S. E. 932;
Los Angeles v. *Hollywood Cemetery Ass'n*, 124 Cal. 344, 71 Am. St. Rep. 75.
State v. *Dubarry*, 44 La. Ann. 1117, 11 So. 718;
State v. *Kuntz*, 47 La. Ann. 106, 16 So. 651;
Sioux Falls v. *Kirby*, 6 S. D. 62, 25 L. R. A. 623;
State v. *Kantler*, 33 Minn. 69, 21 N. W. 856.

The first sentence in Section 4 providing "That whenever the full production from any common source • • • can only be obtained under conditions constituting waste, as herein defined (clearly meaning

without a market for all oil at a price determined by the Corporation Commission under Section 2), then any person, firm or corporation, having the right to" produce from such common source "may take therefrom only such proportion of all crude oil and petroleum that may be produced therefrom, without waste (meaning without a full market as interpreted by the Commission), as the production of the well or wells of any such person, firm or corporation, bears to the total production of such common source of supply," is, without the next sentence, void for uncertainty in that it prescribes no standard by which an operator can determine his proportionate part for the reason that he has no means of knowing by any fixed standard the amount of the full production of the field or the exact amount of the market demand for the field. How could an operator know when he is violating that provision of the statute? By itself the first sentence in Section 4 is therefore void for uncertainty.

Smith v. *Cahoon, Sheriff*, 283 U. S. 553;

Connally v. *General Construction Co.*, 269 U. S. 385;

Cline v. *Frink Dairy Co.*, 274 U. S. 457;

United States v. *L. Cohen Gro. Co.*, 255 U. S. 81;

International Harvester Co. v. *Kentucky*, 234 U. S. 216;

Collins v. *Kentucky*, 234 U. S. 634;

Atlantic Refining Co. v. *Trumbull, Governor*, 43 Fed. (2d) 154;

Chicago & Northwestern Ry. Co. v. *Railroad Commission*, 280 Fed. 398;

L. & N. R. R. Co. v. Commonwealth, 99 Ky. 132, 59 Am. St. Rep. 457;
State v. *Lantz,* 90 W. Va. 738. 111 S. E. 766;
Ex parte Schmolke, 248 Pac. 244 (Cal.);
Ex parte Jackson, 45 Ark. 158;
Patten v. *Aluminum Castings Co.,* 135 Ohio St. 1, 136 N. E. 426;
Ex parte Peppers, 186 Cal. 682, 209 Pac. 896.

The second sentence in Section 4 authorizes the Commission to so "regulate the taking of crude oil or petroleum from any or all such common sources of supply * * * as to prevent the inequitable or unfair taking, from a common source of supply, of such crude oil or petroleum, by any person, firm or corporation." This sentence, without Section 5, would vest unlimited legislative and discretionary powers in the Commission in violation of the rule stated in the above authorities and in violation of Section 1 of Article 4 of the Oklahoma Constitution dividing the powers of the state government into three separate departments, Legislative, Executive and Judicial, and declaring that they "shall be separate and distinct, and neither shall exercise the powers properly belonging to either of the others;" also in violation of Section 1 of Article 5 of the Oklahoma Constitution vesting the "legislative authority of the state" in a "Legislature, consisting of a Senate and a House of Representatives."

Therefore, Section 5 of the Act is a necessary adjunct to Section 4 because without a gauge of the wells, as required by Section 5, neither the *operator*

nor the Commission would have any standard by which to determine the amount of oil *less than all*, an operator can take from a given field.

Webster defines the word "gauge" to mean "To find the exact measurement of, as of rainfall. To measure or ascertain the amount of contents of or the capacity of, as of a pipe, barrel or keg. To measure the capacity, character, or ability of; to estimate; to judge of. To measure or limit by or as by a gauge, especially so as to conform to a standard; to measure off or set out; as, to gauge a wire, a line," etc.

Therefore, the gauging of the wells is a condition precedent to the making and enforcing of any orders restricting the production from a common source to an amount less than the full capacity thereof because (a) without Section 5 requiring a gauge, Section 4 would be unconstitutional, and (b) a gauge is a statutory prerequisite to the exercise of the authority conferred on the Commission by Section 4. (22d Assignment of error, R., vol. 1, pt. 2, p. 385.)

(NOTE: Collins, state wide Umpire, under whose supervision gauges were made, testified (bottom Page 289, R., vol. 1, pt. 2) "that the operators in the Oklahoma City field are not given any notice of the taking of any gauge in the Greater Seminole area, and, conversely, operators in the Seminole area are not given any notice of the taking of potential in the Oklahoma City field." See Trial Court Finding that no notice was given. (R., vol 1, pt. 2, p. 204, last line in first paragraph.)

As the potential in one field affected materially the amount an operator in another field was allowed to produce, we contend the gauges should be made by a sworn *state* officer or notice served on all operators of time of gauge.)

SECOND.

That a gauge made in accordance with the rules of the Commission permitting the operator to gauge his own wells in presence of a representative of an adjoining operator, although agreed to by a majority of the Operators' Committee or the umpire, is void in that private parties are permitted to determine the basis (potential production) for the proration of production and consequently markets in which all operators are interested. That no such power and authority can be delegated to private persons is clear. (See Assignments of Error 23-24 and 27, R., vol. 1, pt. 2, p. 386.)

The trial court made an extended special finding as to gauges, which recites the procedure incident thereto, in detail. (Rec., vol. I, pt. 2, pp. 200-205, inc.)

That gauges made by private persons are void, see:

Washington, ex rel. Seattle Title Trust Co. v. *Roberge*, 278 U. S. 116, 73 L. ed. 210;

Eubank v. *Richmond*, 226 U. S. 137, 57 L. ed. 156, 42 L. R. A. (N. S.) 1123;

State v. *Crawford*, 104 Kan. 141, 2 A. L. R. 880;

Tilford v. *Belknap*, 126 Ky. 244, 11 L. R. A. (N. S.) 708;

Hays v. *Poplar Bluff*, 263 Mo. 516, L. R. A. 1915-D, 595;

St. Louis v. *Howard*, 119 Mo. 41, 41 Am. St. Rep. 630;

State ex. rel. Nehrbass v. *Harper*, 162 Wis. 589, 156 N. W. 941;

St. Louis v. *Russell*, 116 Mo. 248, 20 L. R. A. 721;

State ex. rel. Omaha Gas Co. v. *Withnell*, 78 Neb. 33, 8 L. R. A. (N. S.) 978, 126 Am. St. Rep. 586;

Owensboro & Nashville R. Co. v. *Todd*, 91 Ky. 175, 11 L. R. A. 285;

Coster v. *Tide Water Co.*, 18 N. J. Eq. 63;

Ex parte Sing Lee, 96 Cal. 354, 31 Am. St. Rep. 218;

State v. *Tenant*, 110 N. C. 609, 28 Am. St. Rep. 715;

Chicago v. *Trotter*, 136 Ill. 430;

Marx v. *Maybury*, 36 Fed. (2d) 397;

State of Washington v. *Fairchild*, 224 U. S. 510, 56 L. ed. 863;

Londoner v. *Denver*, 210 U. S. 373, 52 L. ed 1103;

Soliah v. *Heskin*, 222 U. S. 522, 56 L. ed. 294;

Northrop v. *City of Waterbury*, 81 Conn. 305, 70 Atl. 1024;

Byrnes v. *Borough of Riverton*, 64 N. J. L. 210, 44 Atl. 857.

The delegation of such powers to private persons violates the 14th Amendment as shown by the above authorities.

In *State* v. *Crawford*, 104 Kan. 141, 2 A. L. R. 880,

supra, the court held that "The Legislature cannot delegate to private individuals and private associations of persons the power to make obligatory rules concerning the management and care of property, nor provide that the breach of such rules shall be a penal offense."

In Washington, ex rel. Seattle Title Trust Co. v. *Roberge,* 278 U. S. 116, 73 L. Ed. 210, and *Eubank* v. *Richmond,* 226 U. S. 137, 57 L. Ed. 156, 42 L. R. A. (N. S.) 1123, *this court held that municipal ordinances conditioning the enjoyment of property upon the consent of private persons (other property owners) are unconstitutional and void.*

These so-called gauges having been made by private owners and not by any impartial official representative of the state, are void because they furnish the basis—the very foundation—upon which the Commission rests its orders limiting the plaintiff's right to produce oil. Assuming, without conceding, that the state, in the exercise of its police power, may restrict production of oil where full production cannot find a "reasonable market demand," nevertheless, there must be some standard of measurement by which the producer can know in advance the proportionate part he is entitled to take, and this proportionate part must be determined in a constitutional manner. Plaintiff's right to produce cannot be made dependent upon what *private* persons determine to be the capacity of the common source.

Although plaintiff may have no complaint against the gauge of its wells, nevertheless *the amount*

of oil it is allowed to produce is made dependent upon the gauge of all the other wells in all the fields and that gauge must be made by an impartial official who represents the state, plaintiff and all other producers. It cannot be made by *private* persons, reported by them to the umpire, accepted by the umpire, reported by him to the Commission, and adopted by the Commission.

The opportunity for fraud in such arrangement is too great for frail humanity to overcome.

THIRD.

That gauges made under the supervision of Collins and Bradford are illegal and void because their appointment as umpires was against public policy. They never subscribed to any oath of office. The proration orders and regulations are all permeated with this inseparable, fatal vice. No one should be coerced under threatened penalties to recognize such gauges.

It is not necessary to prove any actual fraud by the umpires in order to set aside all gauges. The law will not tolerate such conduct and the rules governing transactions between fiduciaries should apply.

In other words, as said in *Okfuskee County* v. *Hazelwood*, 79 Okla. 187, 11 A. L. R. 712, "The door is shut to all investigation. On the principle that a man cannot serve two masters, especially where self-interest is involved, the transaction is vitiated by the law, irrespective of its merits, fairness, or good faith, and whether it is injurious to the client is immaterial."

The principle in the following cases should be applicable:

Michoud v. *Girod*, 4 How. 504, 11 L. ed. 1077;
Hall v. *Coppell*, 7 Wall. 542;

See the admission of Ex-Attorney General West, Special Counsel for the Governor, that the administration of the law by Umpires appointed by the operators, "is iniquitous". (Rec., vol. I, part 2, p. 371:)

United States v. *Dunn*, 268 U. S. 121;
Donahue v. *Will County*, 100 Ill. 94.

FOURTH.

The plaintiff and other operators were entitled to have gauges made under the supervision of a state officer, an officer who had subscribed to the oath required by the Constitution and was free to discharge his official duties without fear of alienating the affections of operators paying his salary and expenses.

Stockton Plumbing & Supply Co. v. *Wheeler*, 68 Cal. App. 592, 229 Pac. 1020-1024;
Bullock v. *Robison*, 176 Ind. 198, 93 N. E. 998-1001;
Singletary v. *Carter*, (S. C.) 21 Am. Dec. 480;
Knight v. *Herrin*, 48 Me. 533;
Morton v. *Crane*, 39 Mich, 526;
City of Fort Wayne v. *Rosenthal*, 75 Ind. 156;
Kirkland v. *The Texas Express Co.*, 57 Miss. 316;
State v. *Lazarone*, 130 La. 1, 57 So. 532.

The principles involved are clearly stated and applied by this Court in *Ascanyan* v. *W. R. Arms Co.*, 103 U. S. 261-278 (13 Otto), 26 L. ed. 539.

(c) PRICE FIXING.

(1) The Commission has administered the law for the purpose of controlling prices of crude oil without regard to waste. The Commission has not at any time undertaken to protect the co-equal rights of the surface owners except during such periods as overproduction was threatening price structure.

In the court's examination of the Commission's various orders and rules "any pretense or masquerade will be disregarded, and the true purpose of a statute ascertained," as said in *Smith* v. *St. Louis & S. W. R. Co.*, 181 U. S. 248-257.

In *MacMillan* v. *Railroad Commission of Texas*, 51 Fed. (2nd) 400, a parallel case, a three-judge Federal Court granted an injunction against the enforcement of orders and regulations of the Texas Railroad Commission, though *prima facie* valid, on the ground that the Commission was undertaking to control prices of crude oil in that State under the guise of preventing physical waste. The court penetrated the disguise and mask and found that the Railroad Commission was undertaking to control prices. Circuit Judge Hutcheson, speaking for the court, said:

> "Presumptively valid though such acts are, courts, bound to give effect not to fictions, but to realities, may not, in construing them, close

their eyes to what all men can see. Disregarding pretense, subterfuge, and chicane, courts must, looking through form to substance, ascertain the true purpose of a statute, not from its recitals of purpose, but from the operation and effect of it as applied and enforced. *Smith* v. *Ry. Co.*, 181 U. S. 248, 21 S. Ct. 603, 45 L. ed. 847; *Bailey* v. *Drexel Furn. Co.*, 259 U. S. 20, 42 S. Ct. 449, 66 L. ed. 817, 21 A. L. R. 1432; *Lochner* v. *New York*, 198 U. S. 64, 25 S. Ct. 539, 49 L. ed. 937, 3 Ann. Cas. 1133; *Meyer* v. *Nebraska*, 262 U. S. 390, 43 S. Ct. 625, 67 L. ed. 1042, 29 A. L. R. 1446; *Henderson* v. *New York*, 92 U. S. 259, 23 L. ed. 542; *Chy Lung* v. *Freeman*, 92 U. S. 275, 23 L. ed. 550. • • •

"Especially must this be so when, as here, under the thinly veiled pretense of going about to prevent physical waste the commission has, in co-operation with persons interested in raising and maintaining prices of oil and its refined products, set on foot a plan which, seated in a desire to bring supply within the compass of demand, derives its impulse and spring from, and finds its scope and its extent in the attempt to control the delicate adjustment of market supply and demand, in order to bring and keep oil prices up."

We invite the court to carefully consider the Commission's opinion of February 10th, 1931, by Chairman Walker (R., vol. 2, pt. 2, p. 190), which is conclusive evidence that the Commission, the Operators' Committee and the oil operators favoring proration were concerning themselves not with waste but with markets and prices.

Chairman Walker, speaking for the Commission in its opinion of February 10th, 1931 (R., vol. 2, pt. 2, p. 191, etc.), said:

> "The only question at issue herein, *aside from that of waste* which is always present in any hearing of this character, is, shall the allowable and ratable takings from the Oklahoma City field be increased and if so, how much. The answer to that question is dependent upon the market demand, *a thing wholly elusive and most difficult, if not impossible of determination.* * * *
>
> "The testimony seems to have been very largely determined by the particular interest of the parties themselves. Nor have some of these parties been altogether consistent in their attitude toward proration; thus those desiring immediate opportunity to *market an increased* amount of crude petroleum generally favor an increase in allowable takings under proration, whereas *those more anxious to preserve the market stability,* and to protect interests *elsewhere,* generally favor the maintenance of the present percentage of allowable takings from the Oklahoma City field, and *the least possible market competition.* Some of the producers whose interests are chiefly in the Oklahoma City field, however, stand squarely on the present policy of proration and suggest the limiting of takings to the actual visible market capacity, and that, of course, on a ratable basis, contending that having relied on the policy of proration and the practice of proration in the Oklahoma City field, they have made no effort to provide an immediate or approximate provision for the taking care of increased runs. * * *

"The Oklahoma City field has been prorated until its production has been reduced to the minimum, now approximately 80,000 barrels. Some of the chief producers in this field have made little or no attempt to market their crude petroleum, *hoping for a day when the production generally would have so declined or have been so* taken care of as to bring about a greater or more advantageous market for the Oklahoma City field. * * *

"The amount of allowable takings from the Oklahoma City field must be dependent upon the market demand, and the issues, we think, herein, must be decided *upon that ground.* Before entering upon a discussion of the evidence thereon or a determination thereof, however, we must give attention to the question of waste."

In discussing underground waste the Commission said (R., vol. 2, pt. 2, p. 194):

"While the application of Wirt Franklin is based, partially, apparently, on the right to take additional runs of oil, as an emergency or salvage proposition, the evidence indicates that underground wastage *may be taken care of wholly aside and apart from these applications and that the granting of the applications is not dependent upon the solution of this question.* The Commission's announcement thereon at the conclusion of the hearing is indicative of its intention, as expeditiously as possible, to take care of this kind of wastage in the Oklahoma City field."

Further, the Commission in the same opinion (R., vol. 2, pt. 2, p. 194-195) said:

> *"To that feature of economic waste wrapped up wholly in the question of price fixing,* we shall not advert for the reason that both the State and the Federal Courts and the parties presenting the proceedings involving proration, have assumed, apparently, that the provision of the law relating to price fixing are invalid, and that the Corporation Commission is without authority to sit as a price fixing agency in the determination of the issues. The *price of crude* petroleum, however, is inseparably related to the question of *econ c waste.* It is the demand for crude petroleum at a price which will permit the operation of wells which keeps men employed and wells operating. Without both a market demand and a price which will pay expenses, wells cannot be kept going or petroleum pumping through the pipe lines, to the trade. Therefore, much of the testimony, touching upon economic waste, had to do with the *price* which might be maintained in the Oklahoma City field and which might reflect itself to the other wells in the state, and in determining whether or not they would be kept in operation."

(2) The Commission has never undertaken to do more than to make a mere estimate of the potential production of the Oklahoma City field and on that estimate, which concededly was greatly exaggerated, undertook to allocate markets.

See Commission's order of November 3rd, 1930 (R., vol. 2, pt. 2, p. 147), wherein the Commission said:

> "By the terms and provisions of said Order No. 5369 it was found that there should be *allo-*

cated to the Oklahoma City pool an outlet of 131,095 *barrels per day in October,* 134,589 barrels per day in November, and 131,003 barrels per day in December, and that this outlet should be used as a basis for fixing the proportional production of the various wells in said pool, until the Commission should find from evidence that a greater or less, *reasonable market demand obtained.*"

This shows the Commission was allocating markets. Each of its orders beginning with June 30th, 1930, undertook to estimate, or rather make a finding of the number of barrels saleable from the State as a whole. It shifted these markets around to suit *itself.*

Thus the Commission in its order of June 30th, 1930 (R., vol. 2, pt. 2, p. 88), found "that the daily demand from Oklahoma is and will be approximately 650,000 barrels per day during the months of July, August and September, 1930," with a potential production from the whole State of 1,362,000 barrels per day.

In its order of July 24th, 1930 (R., vol. 2, pt. 2, p. 102), the Commission found that the potential production per day from the whole State was 1,400,523 barrels and the market demand 550,000 barrels per day.

In its order of August 30th, 1930 (R., vol. 2, pt. 2, p. 109), the Commission found the potential from the entire State was 1,481,118 barrels per day and that the market demand was 550,000 barrels per day.

In its order of October 28th (R., vol. 2, pt. 2, p. 127), the Commission found "that the daily demand for crude oil from Oklahoma is and will be approximately

550,000 barrels in October, 545,000 barrels in November, and 535,000 barrels in December, 1930," and that the potential production from the State at large during those three months would range from 3,600,000 barrels per day to 4,244,000 (round numbers).

As conclusive evidence that the Commission was prorating and allocating markets the Commission found in its order of October 28th, 1930 (R., vol. 2, pt. 2, p. 132), "that it is necessary to curtail the output from said Class "A" pools 50 per cent of the excess in each pool over and above the average of 5 barrels per well per day and that this curtailment is necessary in order to avoid discrimination as between said Class A pools themselves and as between said Class A pools and the other pools of the State and to prevent waste of crude oil in said Class A pools and to protect the co-equal rights of the producers therein." As a matter of fact, Class A pools had a market for all the oil they could produce and there is no finding to the contrary. In that same order the Commission ordered (R., vol. 2, pt. 2, p. 139) that "Oklahoma oil production shall be limited to an average of approximately 550,000 barrels per day during October, 1930, 545,000 barrels per day during November, 1930, and 535,000 barrels per day during December."

In its order of December 30th, 1930 (R., vol. 2, pt. 2, p. 161), the Commission found "that the rated potential daily production of crude oil from the wells in Oklahoma during the month of January, 1931, is and will be approximately 6,252,219 barrels, and that during the months of February and March, 1931, the said rated

potential daily production will be 6,686,564 barrels and 7,263,077 barrels respectively, and that the daily demand for crude oil from *Oklahoma* during the months of January, February and March, 1931, will range between 465,000 barrels per day in January, which the Commission estimates as the probable demand, and 506,095 barrels per day, which is the maximum potential demand as hereinafter explained." Demand for February and March ranged from 469,000 barrels per day to 500,010 barrels per day.

The Curtailment Act can not validly authorize the Commission to take from one field any part of its market and assign or shift it to another and if the Act is capable of that construction it violates the Fourteenth Amendment in that it takes away from one or more operators in a given field their business without any correspondent advantage, and gives it to another. The Commission *exceeded its powers in shifting or allocating markets.*

(d) CONSERVATION.

It will be very early said by the defendants, that to permit the producer (in Oklahoma) to run crude oil to *gas-tight steel storage,* within the State, will bring about such physical *waste* thereof, as to warrant in the interest of *conservation* the creation of an elaborate privately endowed system of economic control, with all of its attendant possibilities for favoritism, mistake and punishment for independence of opinion, or failure to contribute thereto, as revealed in this record.

This subtle appeal misled the majority of the lower

court, in that it is found in the majority opinion, as hereinbefore quoted, that:

> "The theory upon which the orders are predicated is that oil from a given pool shall not be produced in excess of the market demands therefor in order to prevent wasteful storage and wasteful use of gas pressure in lifting the oil." * * * Under these circumstances we are of the opinion that the limiting of the taking to the market demands is a reasonable regulation for the prevention of *waste* and the protection of the co-equal rights of the owners of land over such pool" (R., vol. I, pt. 2, p. 226).

Upon the assumption that the majority of the lower court intended from the quoted (*supra*) excerpt of their opinion, to hold the law valid, as a means of enabling the State (in the interest of conservation), through privately apopinted agents, to prevent *above ground storage of crude oil* as physically wasteful thereof, we briefly direct attention to the record in this important connection.

Judge Phillips, who wrote the majority opinion, evidently having the sympathetic thought in mind, during the trial conducted an examination of the witness Slater, which we quote:

> "By Phillips, J.:
>
> Q. What percentage of deterioration is there in the oil from storage?
>
> A. In volume you mean?
>
> Q. Well, as I understand it, if you store oil the lighter vapors are the ones that you lose?
>
> A. Yes, sir.

Q. And that means you lose some gasoline content?

A. Yes, sir.

Q. What percentage of loss is there in gasoline content?

A. Well, in these steel gas-tight storage tanks there is never over one per cent. lost.

Q. That is by volume?

A. Yes, sir.

Q. If you refine that oil immediately you can recover a little more than if you let it stand for a year and then refine it?

A. It would be very small.

Q. Negligible loss?

A. Yes, sir'';

(Rec., vol. I, part 2, pp. 275-276.)

See also the corroborating testimony of an expert witness Jno. H. Wiggins (Rec., vol. I, part 2, pp. 272-273).

Above ground steel storage (except as to cost thereof), was not objectionable to the Commission, in the formative times about which Judge Phillips speaks (Rec., vol. II, part 3, p. 266, paragraph 6).

The *storage above ground* of oil *produced in conformity with proration orders,* without regard to quantity, has never been forbidden or found objectionable by the Commission as *physically* wasteful, whatever the purpose of such storage might have been, and if gas-tight steel storage of crude oil above ground is wasteful, an order making it so (in any quantity) should be entered by the Commission, which the defendants will admit has never been and will not be done.

With regard to Judge Phillips' second conclusion as to the orders being designed to prevent the excessive waste of gas energy in the wide open flush flow of wells, it is but necessary to note that the complained of waste of gas energy is not in the least sense prevented by the orders, but retarded only in time of complete dissipation in the *intermittent* wide open flush flow admittedly permitted by the orders.

The commission have had occasion to consider the matter of the waste of gas energy, and have had some concern about just what was *actually* happening, for in its order of February 10, 1931, by Walker (Chairman), (Rec., vol. II, part 2, pp. 195-196), it finds that

> "Another and an exceedingly important problem, directly connected with the question of physical waste but also bearing upon the question of economic waste and the ultimate recovery of the field, is the *question of natural gas wastage* in connection with the production of crude petroleum. * * *
>
> "Involved in this wastage of *natural gas* to an extent which to the layman's mind *seems criminal* and which to any mind ought to be conceded to be improvident, is the question of the destruction of gas energy."
>
> * * * * * * *
>
> *"There is no evidence that any reasonable amount of study, care or caution has been given by operators generally in the Oklahoma City field to the conservation of this natural gas energy* or the prevention of waste of natural gas in connection with the production of crude petroleum. We should have jurisdiction to

> prevent such waste and to require the preservation of such energy. If there is any weakness in the law in this respect it should be amended."

In view of, and with knowledge of this enormous waste of gas the Commission, although vested with ample authority under the Oklahoma Statutes, has never prescribed any regulation by which an operator may take out his oil by the use of "mechanical devices" for conserving gas pressure in the ground, although a feasible method is pointed out to the Commission by the witness, J. R. McWilliams, as shown by the Commission's findings of February 10th, 1931 (R., vol. 2, pt. 2, p. 196). See Exhibit No. 44, Rec., vol. II, pt. 3, p. 303, a public document with its amazing disclosures which have wholly failed to secure attention from the Commission.

The defendants' witness, E. F. Guidinger (R., vol. 1, pt. 2, p. 349), on cross-examination (R., vol. 1, pt. 2, p. 353) testified that he had "never known of any operator in any field anywhere prior to proration in Oklahoma operating his wells on 2 or 3 per cent of its production."

Plaintiff's witness, H. M. Stalcup (R., vol. 1, pt. 2, p. 276), testified on direct examination (R., vol. 1, pt. 2, p. 277-278):

> "That by gas-oil ratio is meant the volume of gas produced by a given well measured in the ratio of cubic feet of gas utilized to produce a barrel of oil; that in the Wilcox sand the ratio should be not less than 700 nor more than 2,000 cubic feet to the barrel of oil, 700 being the mini-

mum and 2,000 the maximum for ideal production;

"That the least gas-oil ratio in the Oklahoma City field of which the witness has heard, was a matter of 300 or 400 cubic feet to the barrel of oil, as against a high of several hundred thousand feet; that a ratio of several hundred thousand cubic feet of gas to a barrel of oil could most likely be brought about by structural conditions of the producing formation, or improper completion of the well in setting the casing too high, or landing the flow-string in a position in the producing horizon too far above the saturated oil sand, which would allow a great amount of free, dry gas from either a separate sand or a portion of the oil sand, to needlessly enter the flow-string; that in the opinion of the witness, this is cause for the excessive gas-oil ratio that exists in some of the wells in the Oklahoma City field; that such situation can be remedied by following a directly opposite course, that is, landing the flow-string where it should be landed at the top of the oil saturated portion of the horizon, and in some instances the running of a smaller size tubing would partially remedy the effect; but such reconditioning will not help an extreme case of several hundred thousand cubic feet per barrel;

"That the Skelly Oil Company has produced one of the largest wells in the Oklahoma City field upon a gas-oil ratio of approximately 500 cubic feet of gas to the barrel of oil; that such result was accomplished by carefully coring at the top of the horizon in which it expected to produce oil, analyzing the sand samples, attempting to set its pipe at a point or level which

would be proper to produce all of the oil capable of being produced by the well, with a minimum of gas, and by casing off the 'gassy' formations; that the well referred to was the John Herd Well No. 1; that the gas flow of that well increased to sixty million cubic feet, and nevertheless there was maintained a gas-oil ratio therein of not to exceed 900 cubic feet of gas in the production of a barrel of oil; so that in an identical case a well of that tremendous capacity, if properly handled and the procedure be followed which has been here outlined, a proper gas-oil ratio of not to exceed 900 or 1,000 cubic feet per barrel can be maintained."

On re-examination the witness testified (R., vol. 1, pt. 2, p. 278) that "gas-oil ratio is important regardless of how the well is operated and becomes of more importance in that by holding the gas back you thereby conserve the energy of the gas and take full advantage of its use; that low gas-oil ratio is one of the most important things in producing oil regardless of whether you are producing under proration or otherwise."

Dr. Arnold testified (R., vol. 1, pt. 2, p. 327) that in his opinion "the unrestricted pinching in of a well to say, 2% of its potential, has an injurious effect upon the well" and that he was "unable to say what would be the best percentage of the total production at which the wells could be operated, but would say off-hand from practical experience, that somewhere between 33⅓% and 66⅔% would probably be about the best."

Under the Statutes of Oklahoma the Commission had ample authority to do all the things required by the

California statute upheld by this court in *Bandini Petroleum Co. v. Superior Court*, —— U. S. ——, decided November 23rd, 1931.

Thus, by the Act of the Oklahoma Legislature approved March 30th, 1915 (1915 Session Laws, 326, Secs. 7922-7923, Okla. C. St. 1921), Appendix G, pp. 196-201, inc., the Commission was given "authority to require the conservation of said gas in accordance with the provisions of this act; and, provided, further, the gauge of the capacity of any gas well shall not be taken until such well has been allowed an open flow for a period of 3 days." This power is given "whenever natural gas in commercial quantities, or a gas-bearing stratum, known to contain natural gas in such quantity, is encountered in any well drilled for *oil or gas* in this state" and can not be utilized without waste. The statute under such circumstances requires that the "gas shall be confined to its original stratum until such time as the same can be produced and utilized without waste, and all such strata shall be adequately protected from infiltrating waters"; also "any unrestricted flow of natural gas in excess of two million cubic feet per 24-hour day should be considered a commercial quantity thereof." The 4th Section of the act provides that "The said Commission is authorized and directed to prescribe rules and regulations for the determination of the natural flow of any such well or wells, and to *regulate* the taking of natural gas from any or all such common sources of supply within the state, so as to prevent waste, protect the interests of the public, and of all those having a right to produce

therefrom, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another." The Act provided for hearings before the Commission and conferred ample power upon the Commission to prescribe rules for the conservation of the gas in the Oklahoma City field and protect the co-equal rights of the surface owners without the necessity of an arbitrary rule compelling oil wells to remain shut in for 65 days at a time or prohibiting them from producing over 2 to 6 percent of the potential capacity of their wells. The Commission had ample power under the gas conservation act to require the installation of mechanical devices on oil wells so as to accomplish all the purposes provided by the California statute in the Bandini case and yet up to date the Commission has never undertaken to prescribe any such rules or regulations. It is thus clear that the Commission has been concerning itself with maintaining prices and has endeavored to disguise price fixing under rules *"protesting"* the probable storage of oil in earthen tankage or other physical waste.

J. R. McWilliams, defendants' witness (R., vol. 1, pt. 2, p. 339), a petroleum engineer for the Skelly Oil Company, of which Mr. W. P. Z. German, leading counsel for the defendants in this case, is general counsel, testified on cross-examination (R., vol. 1, pt. 2, p. 346) "No man will drill an oil well unless he thinks he will get his money back" and (R., vol. 1, pt. 2, p. 348) further, that "I have never known of producers pinching in their wells and keeping them pinched in as a practice where there was a good price for the oil. I think

the policy in the past has always been to produce them at maximum capacity."

Judge Kennamer's dissenting opinion (see R., vol. 1, pt. 2, p. 242) strips the mask from these rules in the following pointed and terse language:

> "Defendants point to the enormous waste of gas and casing-head gas in the Oklahoma City field and introduced D. B. Dow as a witness who testified that at a valuation of six cents a thousand the total value of gas and gasoline wasted during the year would be $29,400,000.00 if the field were opened up. But the Commission had made no order requiring the producers to operate their wells on such gas-oil ratio as will conserve the gas. The Commission's orders have been directed at the suppression of the production of oil. During oral argument it was stated by counsel, and not denied, that the record before the Special Master shows that one 18-barrel oil well is operated under the Commission's rules in the Oklahoma City field at an expenditure of over 3,000,000 cubic feet of gas per barrel. The Commission must therefore either have construed Section 7964 of the Oklahoma Comp. Stats, 1921, as authorizing the waste of gas without restriction when produced from an oil well, or otherwise has refused to enforce the statute passed in 1915 embodied in Sections 7920 to 7922, inclusive, of the Oklahoma Comp. Stats. 1921, prohibiting the production of natural gas in such manner and under such conditions as constitute waste and providing that 'whenever natural gas in commercial quantities or a gas bearing stratum, known

to contain natural gas in such quantity, is encountered in any well drilled for oil or gas in this state, such gas shall be confined to its original stratum until such time as the same can be produced and utilized without waste, and all such strata shall be adequately protected from infiltrating waters.' Not having taken any steps to conserve the gas as authorized and directed by the Oklahoma statutes of 1915, embodied in Sections 7920 to 7922, Oklahoma Comp. Stats. 1921, my conclusion is that the Commission has not concerned itself with conservation of the natural resources but with the suppression of the production of oil in order to decrease the supply and thus increase the price."

INTERSTATE COMMERCE.

The rules and regulations of the Commission are void in that they interfere with and constitute a burden upon interstate commerce.

(NOTE: This question is raised by the 7th, 9th and 31st assignment of error. R., vol. 1, pt. 2, pp. 381, 383 and 387.)

In 1930, Oklahoma produced 24% of the nation's oil, and with California (25%) and Texas (32%), yielded over 80% of that total, and with Kansas, Arkansas, Louisiana and Wyoming, produced 97% of that total.

Conservation, by Ray Lyman Wilbur, Government Printing Office, 1931, pp. 85 and 86.

The Commission in its order of October 28th, 1930 (R., vol II, pt. 2, p. 135), found "that from 65% to 75%

of the crude oil *sold from the wells* in Oklahoma is sold to refiners and purchasers who take it outside of the State of Oklahoma." *"Sold from the wells"* is a finding that the oil goes from the wells *directly* into interstate commerce.

That its orders limiting production actually burden interstate commerce and were so intended by the Commission see provisions carried through all the orders prohibiting "all purchasers and carriers of oil in the State of Oklahoma * * * are hereby forbidden to purchase or carry oil *produced in violation* of these orders." (R., vol. 2, pt. 2, pp. 100-106-115-141-174-206.)

This was a direct embargo on the interstate carriage of crude oil, except as limited by the proration orders.

In *Lemke* v. *Farmers' Grain Co.*, 258 U. S. 51, 66 L. Ed. 462, this court held unconstitutional a statute of North Dakota, which provided for grain inspection and gave the state inspector the authority to fix the profit at which the grain was sold, and in the language of the court constituted a "comprehensive scheme to regulate the buying of grain." The statute was held to be violative of the commerce clause of the Federal Constitution. The court therein said:

> "* * * The record discloses that North Dakota is a great grain-growing state, producing annually large crops, particularly wheat, for transportation beyond its borders. Complainant, and other buyers of like character, are owners of elevators and purchasers of grain bought in North Dakota, to be shipped to and sold at terminal markets in other states, the principal

> markets being at Minneapolis and Duluth. There is practically no market in North Dakota for the grain purchased by complainant."

The above case and the case of *United States* v. *Patten*, 226 U. S. 540, *supra*, show that where a basic commodity is concerned, upon which the entire nation depends for its supply, no restriction has been allowed by this Court upon the free and competitive marketing of said commodity.

The above case also effectively answers the opinion of the majority of the court below, which states:

> "The principle is too well settled to require citation, that the Congressional power of regulation attaches only when interstate transportation has begun."

The trial court's findings (R., vol. 1, pt. 2, p. 178, etc.) show that plaintiff does a large business in 15 states other than Oklahoma; that its refinery capacity is 18,000 barrels per day; that it owns 263 retail gasoline stations and 256 wholesale gasoline stations in six states, *and that from 65 to 70 per cent* of its refined products are sold in states other than Oklahoma; that the producing of oil is an adjunct to its refinery and that plaintiff has built up a business unit carrying on trade and commerce between the several states. It is not necessary to show an actual prohibition of interstate commerce in order for the rules to constitute a burden thereon. Neither is it necessary to show an express intent to regulate or burden interstate commerce. But the Commission showed its intent to do so, by its Embargo order cited above. (It is true

that ordinarily the mining of coal or producing oil is not interstate business although the products may find their way into interstate trade. Here though we have a business unit long operating in interstate commerce before these rules were prescribed.)

The Commission in its order of June 30th, 1930 (R., vol. 2, pt. 2, p. 86), found that "the potential production of crude oil in the United States is at this time approximately 4,730,000 barrels per day, and imports of crude and refined petroleum aggregate about 300,000 barrels per day, thus creating a total possible current supply of 5,030,000 barrels per day as against an approximate daily demand for domestic use and export of 2,840,000 barrels per day."

In the Commission's order of December 30th, 1930 (R., vol. 2, pt. 2, p. 160), it found "that the potential production of crude oil in the United States is at this time approximately 10,000,000 barrels per day, and imports of crude and refined petroleum aggregate about 300,000 barrels per day, thus creating a total possible current supply of 10,300,000 barrels per day as against an approximate daily demand for domestic use and export of 2,500,000 barrels per day." In the same order (R., vol. 2, pt. 2, p. 161) the Commission found that "the rated potential daily production of crude oil from the wells in Oklahoma during the month of January, 1931, is and will be approximately 6,252,219 barrels" and for February and March, 1931, 6,686,564 barrels and 7,263,077 barrels, respectively.

On that basis the potential of Oklahoma was more than 60 per cent of the entire potential of the United

States, and the Oklahoma City field alone has a producing capacity equivalent to one-fifth of the entire production of the United States. This is shown by the Commission's orders above referred to and the order of October 28th, 1930 (R., vol. 2, pt. 2, p. 125), and the order of February 10th, 1931 (R., vol. 2, pt. 2, p. 205), changing the formula for determining the Oklahoma City potential. Under the new formula the Commission finds that the Oklahoma City field has a capacity in excess of 2,000,000 barrels per day and that basis gives Oklahoma City approximately one-fifth of all the production in the United States.

If the effect of the rules is to limit substantially the amount of a product entering into or its price in, interstate markets, then the act is an interference with interstate commerce. (*United Mine Workers of America* v. *Coronado Coal Co.*, 259 U. S. 407.)

On the second appeal (Coronado Coal Company case, 268 U. S. 295) Chief Justice Taft pointed out that the former judgment that the restraint was not an interference, had been based on the fact that the potential production of the mines involved could not materially affect the amount of coal moving into interstate commerce. "We declined to hold," he said in the second opinion, "that the mere elimination from interstate trade of 5,000 tons a week which we took to be the practical limit of capacity of the mines of plaintiffs, was significant in the total tonnage of the country or state, or that its stoppage furnished a basis of itself for infering a palpable and intentional restraint of interstate trade."

This statement of the Court brought the question—"When is the production of a commodity within the commerce clause?"—out of the realm of legal speculation and into that of reality. The fact that the potential capacity of the mines was shown to be 5,000 tons a day, instead of 5,000 tons a week made the "moving purpose" of District 21, one of the defendant unions, to prevent production for shipment to neighboring states, "a restraint on interstate commerce."

"The mere reduction in the supply of an article to be shipped in interstate commerce," said Chief Justice Taft, in the second opinion "by the illegal or tortious prevention of its manufacture or production, is ordinarily an indirect and remote obstruction to that commerce. But when the intent of those unlawfully preventing the manufacture or production is shown to be to restrain or control the supply entering or moving in interstate commerce or the price of it in interstate markets, their action is a direct violation of the Anti-trust Act." See *Bedford Cut Stone Co.* v. *Journeymen, S. C. Assn.*, 274 U. S. 37.

In *Pennsylvania* v. *West Virginia*, 262 U. S. 553, the Court said that "the power to regulate interstate commerce is expressly committed to Congress and therefore impliedly forbidden to the States. The purpose in this is to protect commercial intercourse from *invidious* restraints, to prevent interference through conflicting or hostile State laws, and to insure uniformity in regulation. *It means that in the matter of interstate commerce we are a single nation—one and the same people.*" (Italics ours.)

As said by Mr. Chief Justice Taft in *Stafford* v. *Wallace*, 258 U. S. 495, plaintiff's refinery is "not a place of rest or final destination" of the oil, it being but "incidental to the current" from one State to another.

It is obvious therefore, that the direct effect of the Commission's orders and their enforcement is to interfere with what is designated by Mr. Chief Justice Taft in *Stafford* v. *Wallace*, 258 U. S. 495, as "constantly flowing traffic" in interstate commerce.

In *West* v. *Kansas Natural Gas Co.*, 221 U. S. 229, this court held that the Act of the Oklahoma Legislature prohibiting exportation of gas out of the State violated the interstate commerce clause of the National Constitution and was therefore void. If the State can not prohibit the exportation of gas, then how far can it go in suppressing the ability to export oil produced in the State?

Pennsylvania v. *West Virginia*, 262 U. S. 553, involved the validity of a West Virginia Act by which it sought to conserve its natural resources—gas—for the health and comfort of its citizens by requiring that gas produced in the State be first applied to the satisfaction of domestic consumers before it could be transported beyond State lines. This court held the Act must fall under the commerce clause, saying that "A State law, whether of the State where the gas is produced or that where it is to be sold, which by its necessary operation prevents, obstructs or burdens such transmission, is a regulation of interstate commerce—a prohibited interference."

In *Board of Trade* v. *Olsen*, 262 U. S. 1, the Court referred to *Swift & Co.* v. *United States*, 196 U. S. 375,

as a "milestone in the interpretation of the commerce clause of the Constitution" and said that by the ruling in that case "It refused to permit local incidents of great interstate movement, which, taken alone, were intrastate, to characterize the movement as such."

Addyston Pipe & Steel Co. v. *United States,* 175 U. S. 211, *Lemke* v. *Farmers Grain Co.,* 258 U. S. 50, and *Foster-Fountain Packing Co.* v. *Haydel,* 278 U. S. 1, are important decisions on this question.

Stafford v. *Wallace,* 258 U. S. 495, 66 L. Ed. 735, involved the constitutionality of the packers and stockyards act passed by Congress insofar as that act provided for the supervision by federal authority of the business of commission men and livestock dealers in the great stock yards of the country.

It was urged that the attempted regulation was invalid because the manner of dealings of the commission merchants and dealers at Chicago was no part of interstate commerce. Mr. Chief Justice Taft holding otherwise said:

> "The object to be secured by the Act is the *free and unburdened flow* of live stock *from the ranges and farms of the west* and the southwest through the great stockyards, and slaughtering centers on the borders of that region, and thence, in the form of meat products, to the consuming cities of the country in the middle west and east, or still as live stock, to the feeding places and fattening farms in the middle west or east, for further preparation for the market. • • •
>
> "The stockyards are not a place of rest or final destination. Thousands of head of live stock arrive daily by carload and trainload lots,

and must be promptly sold and disposed of and moved out to give place to the constantly flowing traffic that presses behind. The stockyards are but a throat through which the current flows, and the transactions which occur therein are only incident to this current from the west to the east, and from one State to another. Such transactions cannot be separated from the movement to which they contribute, and necessarily take on its character. The commission men are essential in making the sales without which the flow of the current would be obstructed, and this, whether they are made to packers or dealers. The dealers are essential to the sales to the stock farmers and feeders. The sales are not, in this aspect, merely local transactions. They create a local change of title, it is true, but they do not stop the flow; they merely change the private interests in the subject of the current, not interfering with, but, on the contrary, being indispensable to, its continuity. The origin of the live stock is in the west; its ultimate destination, known to, and intended by, all engaged in the business, is in the middle west and east, either as meat products or stock for feeding and fattening. This is the definite and well-understood course of business. The stockyards and the sales are necessary factors in the middle of this current of commerce."

In the last cited case, in response to the contention that packers were not engaged in interstate commerce at the time of the supervision by the federal authorities at Chicago because the transportation of the cattle had completely ended—in response to the argument that a technical construction of what constitutes interstate

commerce should be applied—the Court referred to the Swift case and quoted its language that "commerce among the States is not a technical legal conception but a practical one, drawn from the course of business," and said:

> "The application of the commerce clause of the Constitution in the Swift case was the result of the natural development of interstate commerce under modern conditions. It was the inevitable recognition of the great central fact that such streams of commerce from one part of the country to another, which are ever flowing are, in their very essence, the commerce among the States and with foreign nations which historically it was one of the chief purposes of the Constitution to bring under national protection and control. This court declined to defeat this purpose in respect of such a stream, and take it out of complete national regulation *by a nice and technical inquiry into the non-interstate character of some of its necessary incidents and facilities when considered alone and without reference to their association with the movement of which they were an essential but subordinate part.*"

In *Henderson* v. *Wickham*, 92 U. S. 273, 23 L. Ed. 549, the Court held unconstitutional as a regulation of interstate commerce a statute of New York which imposed "a burdensome and almost impossible condition on the ship-master as a prerequisite to his landing his passengers, with an alternative payment of a small sum of money for each."

ANTI-TRUST LAWS.

(1) The Commission's rules and regulations limiting production are in excess of the Commission's powers, and void because the Commission has no authority to accept or assume the functions of a committee or association for the purpose of fixing prices or lessening "the production or sale of any product or article of commerce, or the use or consumption of the same, or to prevent, restrict, limit or diminish the manufacture or output of any such article of commerce, use or consumption."

(NOTE: This question is raised in the 28th paragraph of Plaintiff's Third Amended and Supplemental Bill (R., vol. I, pt. 1, p. 26) and by the 8th (R., vol. I, pt. 2, p. 381-382), 9th and 10th (R., vol. I, pt. 2, p. 383), 11th (R., vol. I, pt. 2, p. 383), 14th and 20th (R., vol. I, pt. 2, p. 384-385), and 28th (R., vol. I, pt. 2, p. 387) assignment of errors.)

If the rules and regulations are in excess of the Commission's power insofar as they undertake to suppress the production of oil, then we are entitled to an injunction under *Herkness* v. *Irion*, 278 U. S., 92-96, without regard to the constitutionality of the Act.

West v. *Kansas Nat. Gas Co.*, 221 U. S. 229, 55 Law Ed. 716.

See:

United States v. *Patten*, 226 U. S. 540, 57 Law Ed. 341;

Henderson v. *Wickham*, 92 U. S. 273, 23 Law Ed. 549.

(2) The Commission had no power to interpose itself as a shield between the operators and purchasers on the one side and the Anti-Trust laws on the other—the Commission had no power to legitimate any such agreement or conspiracy by adopting it and making it what appeared to be its own.

The American Petroleum Institute sponsoring proration adopted through its committee at Houston, Texas, on March 16, 1929, a resolution proposing an agreement to limit production and addressed a letter to the Chairman of the Federal Oil Conservation Board seeking assurance that such partes, so agreeing, might be relieved from the operation of the Acts of Congress forbidding agreements in restraint of interstate commerce.

The Attorney-General gave the following reply to the Board upon its having presented the inquiry to the Attorney-General:

OFFICE OF THE ATTORNEY-GENERAL,
Washington, D. C.

March 29, 1929.

"Honorable Ray Lyman Wilbur,
Secretary of the Interior,
Washington, D. C.

My dear Mr. Secretary:

I have the letter of March 20th written by you as Chairman of the Federal Oil Conservation Board, enclosing a copy of a resolution adopted by a committee of the American Petroleum In-

stitute at Houston, Texas, on March 16, 1929, proposing that those engaged in the production of petroleum agree to limit production in certain areas in 1929 to the amount produced in 1928 provided that such action be first approved by the Federal Oil Conservation Board and by the authorities in the States affected.

The questions you submit for my opinion are whether the Federal Oil Conservation Board has power to approve the proposed agreement and what, if any, effect such approval might have in relieving the parties to the proposed agreement from the operation of Acts of Congress forbidding agreements in restraint of interstate commerce. You also inquire whether the proposed agreement would violate the Anti-Trust laws of the United States.

The Federal Oil Conservation Board was constituted December 19, 1924, by an Executive Order naming the Secretaries of War, Navy, Interior and Commerce. There was no Act of Congress then in force defining the duties and powers of the Board and there has been no legislation since, dealing with the Board, excepting appropriation Acts, commencing with the Act of January 20th, 1925, appropriating funds for the expenses of the Board.

It is clear that Congress has not given the Board any power to grant to any persons immunity from the operation of Acts of Congress prohibiting agreements in restraint of interstate commerce and that the Board has no authority to approve any action which is contrary to an Act of Congress or to the Anti-Trust laws of any State; and that no action taken by the Board would have the effect of relieving parties to such an agreement from the operation of the Anti-

Trust laws of the United States and of the States. The proceedings of the American Petroleum Institute indicate that the purpose of submitting the proposed agreement to the Federal Oil Conservation Board for approval is to obtain a sanction from the Federal Government which may operate to make the parties to the agreement immune from the operation of the Anti-Trust Laws. For the Federal Conservation Board to grant approval under such circumstances would be assuming authority which it does not have.

The Board's only duties are to investigate and study for the purpose of recommending methods of conservation, and not with the intent that its action in approving or disapproving any plan would have any legal effect on the validity of the plan proposed. As the powers of the Board are limited in this way, the question whether the proposed agreement would violate the Anti-Trust Laws of the United States is apparently not a question arising in one of the Executive Departments on which the Attorney-General is authorized by law to give an opinion. Furthermore, it is not the practice of Attorneys-General to give opinions as to whether proposed action by private persons would violate the laws of the United States.

However, to avoid any misunderstanding as to the attitude of this Department, it is not out of place to say that any proposal to limit production with its consequent effect on Interstate Commerce would receive immediate scrutiny from this Department, with a view to taking such action as the facts and the law would warrant. The proceedings of the Petroleum Insti-

tute make it clear that its members already realize that under existing laws such an agreement could not safely be made without the sanction of some officials of the United States authorized to give it and, as I have already pointed out, no such authority exists.

In the absence of some new legislation by Congress providing for removing such an agreement from the operation of the Anti-Trust Laws, it does not seem practicable to bring about conservation through the medium of such an agreement.

Respectfully yours,

WILLIAM D. MITCHELL,

Attorney-General."

The Corporation Commission of Oklahoma unfortunately did not have the benefit of this opinion which was given to the Federal Oil Conservation Board.

See also—Conservation by Ray Lyman Wilbur—Government Publication 1931, p. 94. We quote from the Secretary of the Interior's book:

"Producers of oil assembled in convention in Houston, Tex., passed resolutions which proposed that oil production for 1929 be limited by them to that of 1928. They came to Washington and asked the approval of the Federal Oil Conservation Board to this plan for action by the industry to limit production. That Board asked the Attorney-General if it had the authority to grant such an approval. The Attorney-General said that the board had no such powers and that the request would not have been made had those making it not realized that 'under existing laws such an agreement could not safely be made

without the sanction of some official of the United States. * * *'' The producers' way out was thus blocked.''

This case falls within the rule announced by the Texas Civil Court of Appeals in *San Antonio Gas Co. v. State,* 54 S. W. 289, holding that it is competent to prove ''that such legislation was sought and obtained in the furtherance of an unlawful design—to restrain trade and stifle competition.'' In that case defendants had obtained a city ordinance extending franchises in furtherance of the design to restrain trade and stifle competition. The court said:

> ''There is no merit in the contention that the pleadings of appellee should have been held insufficient which alleged the different corporations combined to procure legislation from the city council of San Antonio. It was perhaps unnecessary to plead that fact, as it was a circumstance that, with others, established the combination in violation of the statute. It is clearly the right of corporations to apply to legislative bodies for legislation in their behalf, and it is clearly the right of the state to prove that such legislation was *sought and obtained* in the furtherance of an unlawful design—to restrain trade and stifle competition. It was a circumstance, like any other, to be proved in order to establish a combination in violation of the laws of Texas. The information not only alleged the intention to combine, but that the combination was carried into effect through the ordinance obtained from the city council of the city of San Antonio.''

In the Commission's order of June 30th, 1930 (R., vol. 2, pt. 2, p. 85-93), it recites that:

> "The Commission also finds that in the making of said schedule in paragraph (f) the *producers and purchasers* in all of said pools were consulted and meetings of all of said *producers and purchasers* were held at which all of the foregoing factors were considered and that said schedule represents the consensus of opinion of said *producers and purchasers* as to reasonableness of arrangement, necessity and convenience of *producers and purchasers* and equity as between the various common sources of supply, and was agreed to by all producers and purchasers except one." (Italics ours.)

The Commission's orders are based upon and are an inseparable part of a combination in violation of the Anti-Trust laws.

The testimony of Chesebro, Assistant Treasurer of the Carter Oil Company (R., vol. 1, pt. 2, p. 300), Plaintiff's Exhibit 15 (R., vol. 2, pt. 1, p. 9), and Plaintiff's Exhibit 21 (R., vol. 2, pt. 1, p. 30) conclusively show that the operators had entered into a combination to "lessen the production" and sale of crude oil and "the use or consumption of the same" in violation of the Anti-Trust laws, and that the Commission, in excess of its power and authority, was acting as a "committee" for the operators "with the intent or effect to limit or fix the price" of crude oil and "lessen the production or sale of" crude oil and its "use or consumption."

Plaintiff's Exhibit 15 states the names of the contributors to this fund out of which Collins' salary and expenses, aggregating $95,181.39, was paid for the period from November 1st, 1929, to January 1st, 1931. The witness did not have the names and amounts contributed from January 1st, 1931, to the date of trial. Plaintiff's Exhibit 15 shows that during that period the Carter Oil Company contributed $9,324.41; the Gypsy Oil Company (subsidiary of the Gulf Oil Company), $10,315.26; the Magnolia Petroleum Company, $6,013.77; the Mid-Continent Petroleum Corporation, $4,561.20; the Prairie Oil & Gas Company, $9,127.14; The Pure Oil Company, $4,508.63; the Shell Petroleum Corporation, $4,555.55; Sinclair Oil & Gas Company, $8,333.45, and The Texas Corporation, $2,497.77.

Any New York Stock Exchange manual will show that six of these companies have par value stock outstanding aggregating a capitalization of over $1,169,331,560.00, to-wit:

The Pure Oil Company	$88,959,250.00
Prairie Oil & Gas Company	61,035,800.00
Barnsdall Oil Company	82,422,575.00
Skelly Oil Company	25,208,000.00
The Texas Corporation	246,278,775.00
Standard Oil Company of New Jersey	637,961,700.00
Houston Oil Company	27,465,460.00
	$1,169,331,560.00

This does not take into consideration the following contributors to the proration funds, with a capital

stock of no par value, to-wit: Sinclair Oil & Gas Company; the Magnolia Petroleum Company, subsidiary of the Standard Oil Company of New York; the Empire Oil & Gas Company, subsidiary of the Cities Service Company; Twin State Oil Company, subsidiary of the Sun Oil Company; Mid-Kansas Oil & Gas Company, subsidiary of the Ohio Oil Company; Gypsy Oil Company, subsidiary of the Gulf Oil Company; Houston Oil Company, and Phillips Petroleum Corporation.

These companies control the production of crude oil in the Mid-Continent field, and by themselves and through their subsidiaries dominate the oil industry in Oklahoma and Texas, in which two states there is produced 56% of the total production of the United States.

A company engaged in the business of producing, refining, transporting and marketing crude oil and its products, is identified in the industry as an *integrated* company, as distinguished from the company engaged in the production of crude oil only, classified as a *non-integrated* company (R., vol. 1, pt. 2, p. 183). A *natural* advantage (the result of geography, business policy and incidental investment) exists in favor of the *integrated* Oklahoma company, in the cost of manufacturing its raw materials (crude oil so produced) into refined products for marketing. Proration is wholly designed to destroy such *natural* advantage, and create in its stead an artificial advantage to the independent *non-integrated* Oklahoma Company, as well as to the *non-integrated* company affiliated in ownership or control with *integrated* refining interests outside Oklahoma, by requiring the *inte-*

grated company in Oklahoma to leave its crude oil in the natural reservoir (in the pretended interest of conservation of natural resources), and purchase for its refining needs crude oil produced by the independent *non-integrated* company and/or the *non-integrated* company affiliated by ownership or control with the *integrated* refining interests outside Oklahoma.

In other words, the use of crude oil which may be produced by the so-called *integrated* (in Oklahoma) company upon its properties, to the extent of its actual refinery needs (without physical waste in any sense), is defined by the lower court to be *economic waste* within the meaning of the statute in question, and should be prohibited; *while to wholly purchase the identical needs of such refinery from one's neighbor* (integrated outside of Oklahoma) *in the same producing area* (at whatever price may be demanded) *results in conservation of the natural resources of the State.*

The theory of the defendants in substance is, that it would be an *economic* waste of a natural resource for the *integrated* (in Oklahoma) company to be permitted to manufacture its crude oil into gasoline to be used in industry upon an available market, while to purchase such crude oil to be so manufactured from the *non-integrated* producer (as above defined within that classification) results in conservation of that natural resource, notwithstanding, perchance, the use of the refined product might be subjected to the most trifling and non-useful purpose.

"During the argument by Ex-Attorney General Charles West, Special Counsel for the

Governor of the State of Oklahoma in this case, Judge Kennamer, referring to a brief Mr. West had filed in this case, said to Mr. West: 'I get the impression you thought the law was being administered under monopoly at this time. This is what I want to find out.' To which Mr. West replied: 'You get the right idea.' Thereupon Judge Kennamer again addressed Mr. West as follows: 'That is right, is it?' To which Mr. West replied: 'I think the administration of this law by the Umpires appointed by the oil companies is iniquitous, and we have asked them to change it, and if they don't change, I think they will be compelled to.' Judge Kennamer: 'That is a very important matter.' To which Mr. West replied: 'I think it is, but it does not destroy the law.'" (*R., vol. I, pt. 2, p. 371*).

The distinguished former Attorney General, Mr. West, rightfully referred to the administration of the law as iniquitous.

Conclusion.

We respectfully submit that:

(*a*) The Act is unconstitutional and void;

(*b*) The Orders, Rules and Regulations of the Corporation Commission promulgated for the enforcement of the Act, are unconstitutional and void;

(*c*) The decree of the lower court, except as to the void penalty sections, should be reversed, and an order entered permanently enjoining the defendants herein from enforcing the said Orders, Rules and Regulations

against this plaintiff and others similarly situated, and from hereafter entering any similar orders, rules and regulations under the authority of the said Act;

(*d*) The decree of the lower court with respect to the void penalties of said Act be affirmed, and

(*e*) The bond required of the plaintiff by the lower court in its order of June 13, 1931, be canceled and the plaintiff and its surety stand discharged from further liability thereunder.

Respectfully submitted,

JAMES M. BECK,
HARRY O. GLASSER,
GEORGE S. RAMSEY,
H. G. McKEEVER,
EDGAR A. DEMULES,
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APPENDIX A.

History of the Times When Statute Enacted Pertinent in Construction Thereof.

In *United States* v. *Union Pacific R. R. Co.*, 91 U. S., 72; 23 L. Ed. 228, this court said:

> "But courts may, with propriety, in construing a statute, recur to the history of the times when it was passed; and this is frequently necessary, in order to ascertain the reason as well as the meaning of particular provisions in it."
>
> *Chicago, R. I. & P. R. Co.* v. *Gist*, 79 Okla. 8-14;
> *Rector of Holy Trinity Church* v. *United States*, 143 U. S., 457;
> *DeGraffenreid v. Iowa Land & Trust Co.*, 20 Okla., 716;
> *Davidson* v. *Gibson*, 56 Fed., 446;
> *People* v. *Supervisors of Columbia Co.*, 43 N. Y., 130;
> *United States* v. *Oregon & C. T. Co.*, 57 Fed., 426.

In view of the above rule, the fact that the Corporation Commission repeatedly undertook to fix the price of crude oil prior to the passage of the Curtailment Act in February, 1915, is important as tending to show the purpose of the Act.

Thus during the month of September, 1914, the Commission entered its Order No. 844 (R. vol. 2, pt. 3, p. 246):

"* * * that the Prairie Oil & Gas Company, the Gulf Pipe Line Company, and the Texas Company *shall not* reduce the price of crude oil below seventy-five (75) cents per barrel * * *"

and thereafter, on September 22nd, 1914, entered its Order No. 846 (R., vol. 2, pt. 3, pp. 247 to 264, incl.), concluding that

"Oil of the gravity and grade of the Cushing oil and the average oil of Northern Oklahoma should not be taken from the ground at a time when it could not be sold at a minimum price of 75 cents per barrel, hence 75 cents per barrel will be the standard now adopted by the Commission, and any oil taken from the ground under conditions and circumstances that would not produce 75 cents per barrel, will be considered as against public policy and against the best interests of the state. The Commission cannot issue an order preventing the common purchasers from paying less than 75 cents per barrel for oil unless the oil can be retained in the ground until the market conditions justify the taking of it therefrom.

"It is hereby ordered, that all producers shall not take more oil from their wells than can be sold upon the market at 65 cents per barrel, or *stored in regulation steel tankage*, until the first day of October, 1914; that the rules and regulations for the curtailing of production will be considered by the Commission at the hearing on September 28th, at which time it will be determined how long the price shall continue at 65 cents per barrel, with a view of raising the same to 75 cents per barrel, the

basis of which the Commission has found to be just *to prevent waste.* The Commission will also consider rules and regulations with reference to storing oil with a view of limiting the storing to a minimum amount.

"It is further ordered, that no common purchaser or other purchaser of crude oil in the State of Oklahoma shall buy oil at a price less than 65 cents per barrel until further ordered by the Commission.

"For the hearing of September 28th, the Commission suggests that the business interests, including the oil producers as well as other affiliated interests, give full consideration to the plan outlined, that is, the curtailing of production to the reasonable market demands and in what manner this can best be done, that the Commission may have the benefit of their business judgment. The Commission can give but little consideration to opinions based upon self interests alone, but invites a consideration of the subject from a broad public and business standpoint with that iron will of determination that characterized Andres Jackson."

In the interim after the entry of Order No. 846, *supra,* and prior to October 1st, 1914, the Commission entered its Order No. 846-A (R., vol. 2, pt. 3, p. 244), to the effect that, Order No. 846, *supra,*

"* * * issued by this Commission on the 22 day of September, 1914, fixing the price at which oil could be produced and at which it could be purchased at 65 cents, is temporarily suspended until further order of the Commission, and no corporation, firm or individual shall take

> oil from the oil sands of Oklahoma when same cannot be sold at a price not less than 55 cents, and no individual, firm or corporation shall purchase oil in Oklahoma at a less price than 55 cents until further order of the Commission."

and,

On October 1st, 1914, entered its Order No. 847 (R., vol. 2, pt. 3, p. 243) that,

> "* * * no producer in the Healdton field shall take any oil from the oil sands of that field, for sale, at a price less than 50 cents per barrel until such time as the conditions can be fully investigated by the Commission, and no common purchaser or other person shall purchase oil hereafter taken from the oil sands of the Healdton field at less than 50 cents per barrel until such time as the Commission can hear and determine the necessities for the less price.
>
> "All parties having storage oil are hereby notified that if the same is sold at less than 50 cents per barrel without permission of the Commission after an investigation as to the quality of the oil, same will be prorated against their runs through the pipe lines."

Low prices for crude oil moved the Legislature to enact the Statute. When the price is high neither the Commission nor the producers have invoked this Statute, and it is important to observe, that:

Order No. 846, (R. vol. 2, pt. 3, p. 263, Sept. 1914) fixed the price of oil at 75¢ per barrel, and further recited that the best remedy for the low price condition would be obtained

> "by partially closing the wells and only producing enough oil therefrom to supply the present demands at a reasonable price,"

citing the case of *Ohio Oil Company* v. *Indiana*, 177 U. S. 200, as authority for so doing.

In the supplementary Order (R., vol. 2, pt. 3, p. 245, No. 846A) the Commission reiterated that the solution of the price problem

> "was a reasonable limitation of the production, that is, protecting one producer against the other,"

and that therefore,

> "until a reasonable price of 75¢ per barrel for oil can be obtained, oil should not be produced in quantities *in excess of the reasonable market demands.*"

Thus was the term "*reasonable market demand*" conceived, first used, and by context fully defined as *demand at a satisfactory price.* This term a short time later, became a part of the law here in question, and now forms the backbone of all Orders of the Corporation Commission.

The Commission apparently recognized that such curtailment would actually harm the producing sands, for the Order recited that the curtailment would be effected

> "with the least possible injury to the wells."

As the overproduction was only temporary, the Commission was not enabled to put its proration plan into

effect; but three months later, immediately after the Legislature convened, the Curtailment Act was enacted so as to put into effect the plan outlined by the Commission in its Order No. 846A, above described.

Section 2 of the Curtailment Act, embodies the direct price-fixing plan prescribed by the Commission in the above orders, and Section 3 embodies the indirect price-fixing plan; that is, the shutting in of production to the

"reasonable market demands."

As shown by the history of the period, the evil aimed at by both the direct and indirect method, was the low price situation caused by temporary overproduction.

On February 18th, 1916, the Commission entered its Order No. 1022 (Rec., vol. II, part 3, p. 264), which should be read in its entirety as evidencing the earliest construction of the Act in question, and emphasis must of course be given to the all-important following portion (Rec., vol. II, part 3, pp. 268 and 269) of that Order:

> "* * * Chap. 25, Session Laws of 1915, *specifically prescribes the jurisdiction of the Commission for fixing the price of the commodity.* It does not give the Commission jurisdiction to fix a price based upon extortion or waste, *but prescribes the conditions upon which the Commission may fix a price for crude oil.*
>
> "The Commission finds the evidence in this case to be insufficient upon which to base a conclusion as to the value of crude oil based upon the selling price of refined products. At the time the complaint was filed, oil in the Healdton field

was selling at 35 cents per barrel. It is now (outside of the record) selling at from 75 cents to $1 per barrel. The by-products fluctuate in price, whether because of increased demand or because the price may be influenced by monopoly may not in all instances be easily determined. If the price of the by-products should be advanced at some time when the demand was greater than others, under the theory of this law the price of crude oil would be advanced, and it would make it impossible to reduce the price of the refined product, and have the effect of increasing the refined products to the consuming public, when the relation between the crude oil and refined oil was established by the Commission, if such a thing were possible.

"Without going into all the details of the evidence with reference to the relative value of the Healdton oil with other oils, we are of the opinion that the fixing of a price of crude oil under Sec. 2 of this act is absolutely impossible and impracticable. The complaint is therefore dismissed."

The legislation thereafter remained, for almost *eleven* years, a dead letter statute, without appropriation, *public* or *otherwise*, for its enforcement, throughout the greater part of which period, however (as now defined by the defendants), Oklahoma was *wastefully* producing great quantities of crude oil upon a *highly satisfactory market demand.*

APPENDIX B.

Plaintiff's Assignment of Error.

(R., vol. 1, pt. 2, p. 379.)

Plaintiff, in its assignment of errors, says that the court below erred:

(1) In holding and decreeing that the Act of the Oklahoma Legislature approved February 11, 1915, entitled "An Act defining and prohibiting the waste of crude oil or petroleum, providing for the equitable taking of the same from the ground and conferring authority on the Corporation Commission, prescribing the penalty for the violation of the Act and declaring an emergency", embodied in Sections 7954 to 7963, inclusive, Oklahoma Compiled Statutes of 1921, hereinafter denominated "Curtailment Act", is not in contravention of the Fourteenth Amendment to the National Constitution in that it deprives the Plaintiff of its property without due process of law.

(2) In failing to hold and decree the said Curtailment Act in contravention of the Fourteenth Amendment to the National Constitution in that it is too uncertain and indefinite to confer upon the Corporation Commission of the State of Oklahoma power and authority to make the orders, rules and regulations Plaintiff complains of in its Third Amended and Supplemental Bill and/or to make rules, regulations and orders of any effect beyond the prevention of the actual physical waste of crude oil in the production thereof in the State of Oklahoma.

(3) • • •.

(4) In failing to hold and decree the Curtailment Act in contravention of the Fourteenth Amendment to

the National Constitution in so far as it undertakes to empower the Corporation Commission to make rules and regulations prohibiting the Plaintiff and others similarly situated from extracting from its leases and/or their leases in the Oklahoma City oil field and other fields in the State of Oklahoma, all the oil its wells will produce without the application of artificial energy, so long as the Plaintiff has facilities for the customary and usual refining and marketing utilization of such oil so produced.

(5) In failing to hold and decree the said Curtailment Act entire and inseparable and as such a price-fixing statute delegating authority to the Corporation Commission to fix prices of crude oil after making the investigation required by Section 2 of the Act, and that when, as of necessity the Act be thus construed, must likewise necessarily be held to be in violation of the Fourteenth Amendment to the National Constitution, in that it deprives

(*a*) the plaintiff of its liberty of contract;
(*b*) equal protection of the law, and
(*c*) its property without due process of law.

(6) In failing to hold and decree that, if said Curtailment Act be separable and the second section thereof unconstitutional or separable therefrom, the whole Act, without Section 2, remains void for uncertainty in that it violates the Fourteenth Amendment to the National Constitution in that it is too vague, indefinite and uncertain to vest authority in the Corporation Commission to make and enforce any of the rules, regulations and orders plaintiff complains of in this case beyond the suppression of actual physical waste of crude oil.

(7) In failing to hold and decree that if said Curtailment Act be separable and the second section thereof separable therefrom, the Act is nevertheless

unconstitutional and violative of the Fourteenth Amendment and of Section 8 of Article 1 of the Federal Constitution, in this, to-wit: That it forbids the production of crude oil in excess of reasonable market demands and gives the Corporation Commission of the State of Oklahoma the authority to determine what shall be reasonable market demand, and that the enforcement of such provision must necessarily result in the fixing of the price of crude oil and must of necessity result in the burdening and regulation of interstate commerce in crude oil, and its products.

(8) In refusing to hold and decree that the following orders of the Corporation Commission in Cause No. 10,146 were intended to and actually did and do have the effect of controlling prices of crude oil in the Oklahoma City field and other fields in Oklahoma and are void because they are in excess of the powers conferred upon the Commission by the Curtailment Act, insofar as they undertake to suppress and restrain the production of crude oil in the Oklahoma City field and other Oklahoma fields without actual physical waste of said minerals, said orders being as follows:

(*a*) Order No. 5189 entered June 30, 1930,
(*b*) Order No. 5292 entered August 30, 1930,
(*c*) Order No. 5337 entered September 30, 1930,
(*d*) Order No. 5343 entered October 6, 1930,
(*e*) Order No. 5345 entered October 10, 1930,
(*f*) Order No. 5369 entered October 28, 1930,
(*g*) Order No. 5374 entered November 3, 1930,
(*h*) Order No. 5387 entered November 8, 1930,
(*i*) Order No. 5396 entered December 4, 1930,
(*j*) Order No. 5413 entered December 30, 1930,
(*k*) Order No. 5414 entered December 30, 1930,
(*l*) Order No. 5468 entered April 20, 1931,
(*m*) Order No. 5486 entered May 29, 1931,
(*n*) Order No. 5548 entered June 27, 1931,
(*o*) Order No. 5549 entered June 29, 1931;

together with the respective Journal Entries made by the Commission for the enforcement of these orders, and Plaintiff re-states that these orders separately and collectively have the force and effect of depriving plaintiff of its

(*a*) liberty of contract,
(*b*) equal protection of the laws, and
(*c*) property without due process of law,

in violation of the Fourteenth Amendment to the National Constitution.

(9) In failing to hold and decree that the orders identified in Assignment of Error No. 8, are unconstitutional and violative of the Fourteenth Amendment and of Section 8 of Article 1 of the Federal Constitution, in this, to-wit: That they forbid the production of crude oil in excess of reasonable market demands as determined by the Corporation Commission, and that such provisions must necessarily result in the fixing of the price of crude oil and must of necessity result in the regulation of interstate commerce in crude oil, and its products.

(10) In refusing to hold and decree that the orders of the Corporation Commission identified in Assignment of Error No. 8, were not promulgated for the purpose of preventing waste or protecting any other public interest, but were, on the contrary, promulgated and sought to be enforced for the purpose of controlling the crude oil market for the benefit of a particular class, to-wit, producers of crude oil.

(11) In refusing to hold and decree that the orders of the Corporation Commission, identified in Assignment of Error No. 8, were promulgated for the purpose of and did fix market demand for crude oil, within the State of Oklahoma, and were designed to

and did limit the production of crude oil within the State of Oklahoma, to such figure as would equal the market demand thus arbitrarily fixed by the Corporation Commission.

(12) In holding and decreeing that to thus limit the production of crude oil to such arbitrarily fixed market demand, constitutes a reasonable and necessary means of preventing physical waste of crude oil.

(13) * * *.

(14) In failing to hold and decree that the action of the Corporation Commission in computing market demand entirely upon the "nominations" of the pipe line companies, sustains a holding that the purpose of the orders described in Assignment of Error No. 8, was not to prevent waste or protect any other public interest, but rather to control the market for crude oil for the oil producers within the State of Oklahoma; and further sustains a holding that the orders so described do not employ reasonable or necessary means to prevent physical waste.

(15) * * *.

(16) * * *.

(17) In failing to hold and decree that the appointment of umpires by the orders described in Assignment of Error No. 8, whose salaries are paid by private operators, sustains a finding that the said orders are, and were, not promulgated for the purpose of protecting any public interest, but for the purpose of benefiting the operator paying the salaries of such umpires.

(18) In refusing to hold and decree that the market demand which is fixed by the orders of the Corporation Commission identified in Assignment of Error No. 8, is to the extent of at least 65% thereof, an interstate market demand.

(19) In failing to find that the said Curtailment Act has never been enforced by orders of the Corporation Commission, either as a waste measure or otherwise, except in periods when overproduction of crude oil has threatened a reduction of the posted or market price thereof.

(20) In refusing to hold and decree that the failure of the Corporation Commission to enforce said Curtailment Act except in periods of overproduction sustains a necessary finding that the purpose of the said curtailment act and of the orders of the Commission identified in Assignment of Error No. 8, was to control the market for a particular class, to-wit: the oil producer, rather than for the purpose of preventing physical waste of natural resources.

(21) In refusing to hold and decree that without the provisions of Section 5 of the Curtailment Act requiring the Commission to gauge or cause to be gauged each oil well for the purpose of determining its production, the provisions of Section 4 of the Act would be unconstitutional in that it vests in the Commission unlimited and unrestrained arbitrary power and discretion over Plaintiff's property and the property of others similarly situated in violation of the due process clause of the Fourteenth Amendment to the National Constitution and deprives Plaintiff and others similarly situated of their liberty of contract and equal protection of the laws guaranteed by the Fourteenth Amendment to the National Constitution.

(22) In refusing to hold and decree that a gauge of each well required by Section 5 of the Curtailment Act was a condition precedent to the Commission's authority to make any rules or orders regulating or specifying the amount of oil such well shall or may be permitted to produce.

(23) In failing to hold and decree that a legal or valid gauge of the wells in either the Seminole or Oklahoma City fields or other fields, had not been made by the Commission or under the Commission's orders and directions and that without such a gauge, the Commission was powerless to exercise the authority attempted to be conferred upon it by Sections 3 and 4 of the Curtailment Act.

(24) In refusing to hold and decree that gauges made in accordance with the rules of the Commission permitting the operator to gauge his own wells, in the presence of a representative of an adjoining operator, although agreed to by the majority of the Operator's Committee or Umpire, are void in that interested parties were permitted to determine the basis (potential production) for the proration of markets in which such operators are and were interested.

(25) In refusing to hold and decree that the Oklahoma Legislature was without power to delegate authority to the Corporation Commission to create the office of Umpire and prescribe the qualifications and duties thereof and to "arrange" for the payment by beneficiary interests, of his salary, and that if Section 5 of the Curtailment Act undertakes to vest that authority in the Commission, it is void under Section 1 of Article 4 of the Oklahoma Constitution and Section 1 of Article 5 of the Oklahoma Constitution.

(26) In refusing to hold and decree that the Commission was without authority to delegate to Ray Collins and/or Otto Bradford as Umpire or Umpires any jurisdiction of a discretionary nature and that all the rules and regulations undertaking to vest any powers in Collins and Bradford other than purely clerical or ministerial, are void.

(27) In refusing to hold and decree that gauges

made under the supervision of Collins and Bradford are illegal and void because their appointment as Umpires was against public policy and contrary to every sense of public decency and that the proration orders and regulations are all permeated with this inseparable vice and that neither Plaintiff nor others similarly situated should be coerced under threatened penalties to obey any orders and regulations so created.

(28) In refusing to hold and decree that the payment of salaries by the Operator's Committee collected by the Committee from persons, firms and corporations engaged in the production of crude oil in Oklahoma, and owning pipe lines and refineries within such State, to Ray Collins, vitiates all their alleged acts and so far contaminates the Commission's rules and regulations as to render them unenforceable and null and void as laws regulating and restraining the production of crude oil in Oklahoma.

(29) In refusing to hold and decree that under Section 1 of Article 15 of the Oklahoma Constitution and Section 126 of the Oklahoma Compiled Statutes of 1921, the failure of Ray Collins and Otto Bradford to take and subscribe to the oath of office of Umpire or Umpires was a misdemeanor and operated to forfeit the right of each to the office of Umpire.

(30) In refusing to hold and decree that insofar as Section 8 of the Curtailment Act undertakes to authorize the Commission to impose fines under Section 3498 of Oklahoma Compiled Statutes of 1921 for the violation of any of its rules and orders complained of in this case, the same is in violation of Section 1 of Article 4 of the Oklahoma Constitution, Sections 19 and 35 of Article 9 of the Oklahoma Constitution.

(31) In refusing to hold and decree that the orders, rules and regulations of the Commission and their en-

forcement operate directly to interfere with, restrain, and burden interstate commerce in violation of Section 8 of Article 1 of the National Constitution.

(32) In making and entering, over the objection of Plaintiff, its Final Decree of September 11th, 1931.

For further specification of Assigned Errors to be urged, the Appellant will also rely upon its Assignment of Errors Nos. 3, 9, 13, 15, 16, and 33 to 109, inclusive, as set forth in the Record, Vol. I, Part 2, pp. 379 to 391, inc.; and states that,

(*a*) No. 3 relates to the constitutionality of the so-called Curtailment Act;

(*b*) Nos. 9, 13, 15, 16, and 36, relate to the constitutionality of the Administrative Orders of the Commission;

(*c*) Nos. 9 and 52, relate to monopolistic control of the oil business;

(*d*) Nos. 33, 34, 35, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, and 81, relate to the Requested Findings of Fact by Appellant;

(*e*) Nos. 82, 83, 84, 85, 86, 87, 88, 89, and 90, relate to the Findings of Fact by the Trial Court;

(*f*) Nos. 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107 and 108, relate to the conclusions of law by the Trial Court; and

(*g*) No. 109 to the Overruling and Denying Petition for Rehearing.

APPENDIX C.

History of Case Through the Court Below.

First. On December 10th, 1930, plaintiff served notice on the then Governor of Oklahoma and the Attorney-General that on December 17th, 1930, it would present to a three-judge court, at Oklahoma City, Oklahoma, its application for a temporary injunction (R., vol. 1, pt. 1, p. 2).

Second. On February 9th, 1931, the three-judge court rendered and entered an order denying the application for a temporary injunction (R., vol. 1, pt. 1, p. 3).

Third. On April 22nd, 1931, plaintiff prayed an appeal to the Supreme Court of the United States from the order denying a temporary injunction, which appeal was allowed (R., vol. 1, pt. 1, p. 4) and perfected as shown by the record on file in this court entitled *Champlin Refining Company,* appellant, vs. *Corporation Commission of the State of Oklahoma, etc., et al.,* appellees, No. 122, October Term, 1931, of which record this court will take *judicial notice. National Fire Insurance Co.* v. *Thompson,* 281 U. S. 331, 74 L. Ed. 881.

Fourth. On January 10th, 1931, the term of office of Fred Capshaw, defendant, having expired, his successor in office, Paul Walker, was substituted as one of the defendants, as shown by the findings of fact (R., vol. 1, pt. 2, p. 177).

This revivor against Walker as Capshaw's successor was authorized by Ch. 88, Okla. Session Laws of 1923, and the Act of Congress approved February 13, 1925 (St. L., vol. 43, p. 941).

Fifth. As alleged in plaintiff's third amended and supplemental bill it filed its second amended and supplemental bill on May 29th, 1931 (R., vol. 1, pt. 1, p. 6).

Sixth. On June 8th, 1931, plaintiff served notice on Honorable William H. Murray, the present governor,

that on June 13th, 1931, it would present its application to the three-judge court for a temporary injunction (R., vol. 1, pt. 1, p. 5).

Seventh. On June 13th, 1931 (R., vol. 1, pt. 2, p. 373), the three-judge court below entered an order ordering and adjudging "until the further order of this court, that the defendants, Paul Walker, E. R. Hughes and C. C. Childers, individually and as members of the Corporation Commission of the State of Oklahoma, and all persons acting by or under them, be and they are hereby enjoined from instituting any proceedings against the plaintiff under the provisions of Sections 3498, 3499 and 7959, Okla. C. St. 1921, on account of alleged violations of said proration order or orders; that the defendants, Louis R. Morris, individually and as county attorney of Oklahoma County, Oklahoma, and J. Berry King, individually and as Attorney General of the State of Oklahoma, and all persons acting by, through or under them, be and they are hereby enjoined from instituting or prosecuting receivership proceedings against the plaintiff under the provisions of Section 7962, Okla. C. St. 1921, "and by said order permitted the plaintiff, until further order of the Court, to produce from its wells in the Oklahoma City field a maximum of 10,000 barrels per day.

Eighth. On August 3rd, 1931, plaintiff filed its third amended and supplemental bill (R., vol. 1, pt. 1. p. 6. For matters on which the order of June 13th, 1931, above referred to, was based, see R., vol. 1, pt. 1, pages 30 to 34 inclusive.

Ninth. On August 5th, 1931, this case was heard on its merits before the three-judge court, the defendant Commissioners appearing by their counsel, the Governor appearing by his special counsel, Charles J. West, and the Attorney General appearing for himself and other defendants (R., vol. 1, pt. 2, p. 248). On that same date the court made and filed its order vacat-

ing its order of June 13th, 1931, allowing plaintiff to produce a maximum of 10,000 barrels per day from its Oklahoma City wells and staying the enforcement of the Commission's proration orders and regulations pending decision by this court on appeal (R., vol. 1, pt. 2, p. 375).

Tenth. A final decree was filed September 11th, 1931, adjudging the Curtailment Act constitutional and the orders, rules and regulations of the Commission valid, to which plaintiff excepted, and also adjudging Sections 8 and 9 of the Curtailment Act, being the penalty provisions, invalid, to which the defendants and each of them excepted. The Court entered an order perpetually enjoining the defendants, J. Berry King, Attorney General, and Louis R. Morris, County Attorney of Oklahoma County, and each of them, their servants and employees, from enforcing or attempting to enforce the provisions, or any part thereof, of Sections 8 and 9 of the Act, to which the defendants and each of them excepted; and therein denied plaintiff all other relief, to which plaintiff excepted (R., vol. 1, pt. 2, p. 248, etc.).

Eleventh. On September 11th, 1931, the Court filed its (*a*) special findings of fact (R., vol. 1, pt. 2, p. 177) and (*b*) conclusions of law (R., vol. 1, pt. 2, p. 213).

Twelfth. On September 16th, 1931, the plaintiff's petition for rehearing was denied (R., vol. 1, pt. 2, p. 250).

Thirteenth. The petition for appeal from the final judgment to the Supreme Court of the United States was filed September 23, 1931, with assignment of errors (R., vol. 1, pt. 2, p. 379).

Fourteenth. Plaintiff's appeal was allowed October 15th, 1931, and appeal bond executed (R., vol. 1, pt. 2, p. 392).

Fifteenth. On October 15th, 1931, the Court below extended the time for filing record in the Supreme Court of the United States until November 25th, 1931 (R., vol. 1, pt. 2, p. 405).

APPENDIX D.

Legal Points Preliminary to Main Questions.

FIRST.

Although Section 7 of the Curtailment Act gives the Oklahoma Supreme Court jurisdiction "to review the action of said Commission in making any order, or orders, under this Act", plaintiff had the right to invoke the jurisdiction of the Federal District Court without appealing to the State Supreme Court for two reasons:

(*a*) In so far as the Act undertakes to confer jurisdiction in the Oklahoma Supreme Court to exercise any administrative, legislative or non-judicial function or supervision over the Commission's legislative or administrative orders, it is void under Section 2 of Article 7 of the Oklahoma Constitution vesting the Supreme Court with appellate jurisdiction coextensive with the state in "all civil cases at law and in equity," and Section 1 of Article 4 of the Oklahoma Constitution dividing the powers of government of the state "into three separate departments: the Legislative, Executive and Judicial" and declaring that "except as provided in this constitution, the Legislative, Executive and Judicial departments of government shall be separate and distinct, and neither shall exercise the powers properly belonging to either of the others." (See Compiled Oklahoma Statutes 1921, pages 127 and 159.)

In *In re County Commissioners of Counties Comprising Seventh Judicial District*, 22 Okla. 435, 98 Pac.

557, the court held that an act of the legislature providing that upon the recommendation of the Supreme Court "the Governor shall appoint an additional judge" for a designated time was void and unconstitutional in that it undertook to delegate to the Supreme Court legislative powers. See, also:

Bacon v. *Rutland R. Co.*, 232 U. S. 134, 58 L. Ed. 538;

In re Burnette, 73 Kan. 609, 85 Pac., 575;

Helena Water Co. v. *City of Helena*, 277 Fed. 66;

Federal Radio Commission v. *General Electric Co.*, 281 U. S. 464, 74 L. Ed. 969;

Grubb v. *Public Utilities Commission*, 281 U. S. 470, 74 L. Ed. 972.

(*b*) Because the Supreme Court on appeal, if it accepted appellate jurisdiction, would be confined to judicial questions in reviewing the Commission's orders—that is, questions as to whether the Commission had exceeded its powers conferred by the Curtailment Act, or whether the Act is in violation of the state or National Constitution, or whether the Commission's *orders* violate any provision of the state or National Constitution—all judicial questions.

The Commission's rules were made to govern the *future conduct* of parties by prescribing in advance how much oil they would be permitted to produce during future periods, generally three months.

As said by Mr. Justice Holmes in *Prentis* v. *Atlantic Coast Line Company*, 211 U. S. 210-226, 53 L. Ed. 150-158:

> "A judicial inquiry investigates, declares, and enforces liabilities as they stand on present or

past facts and under laws supposed already to exist," whereas "Legislation, on the other hand, looks to the future and changes existing conditions by making a new rule, to be applied thereafter to all or some part of those subject to its power."

Substantially the same distinction between judicial and legislative powers was made in *In re County Commissioners of Counties Comprising Seventh Judicial District,* 22 Okla. 435, 98 Pac. 557.

The State Supreme Court on appeal has no power to substitute its own legislative or administrative orders for those of the Commission as it may do in railroad and transportation rate cases, under Section 23 of Article 9 of the Oklahoma Constitution, empowering the court on appeal from orders of the Commission "affecting the rates, charges or the classifications of traffic of any transportation or transmission company" to "substitute therefor such orders as, in its opinion, the Commission should have made at the time of entering the order appealed from; otherwise the reversal order shall not be valid."

The sections of Article 9 of the Oklahoma Constitution creating the Commission and conferring upon it legislative and administrative powers with the right of appeal to the Supreme Court were taken from the Virginia Constitution creating the Virginia Corporation Commission and under review in *Prentis* v. *Atlantic Coast Line Company,* 211 U. S. 210, 53 L. Ed. 150.

The State Supreme Court on appeal from an order of the Corporation Commission fixing railroad rates may exercise legislative and administrative powers be-

cause the Oklahoma *Constitution*, not any statute, confers upon it such powers in railroad rate cases. When the State Supreme Court will exercise appellate jurisdiction from the Corporation Commission and when not was considered in

Atchison, T. & S. F. Ry. Co. v. *State*, 28 Okla. 797;

St. L. & S. F. R. Co. v. *State*, 28 Okla. 802;

Shawnee Gas & Electric Co. v. *State*, 31 Okla. 505;

Harriss-Irby Cotton Co. v. *State*, 31 Okla. 603.

In *Bacon* v. *Rutland Railroad Co.*, 232 U. S. 134, 58 L. Ed. 538, the railroad company had filed a bill to restrain the public service commission of Vermont from enforcing an order concerning a passenger station. The Commission moved to dismiss on the ground that the appellee had *not* taken an appeal from the order to the Vermont Supreme Court as provided by the statutes, and therefore ought not to be heard to complain elsewhere. This court pointed out that under the Vermont Constitution the powers of government were divided into three branches, legislative, judicial and executive, and that unlike the Virginia Constitution under consideration in *Prentis* v. *Atlantic Coast Line Company*, the Vermont Constitution did not confer any legislative powers upon the Vermont Supreme Court and consequently on appeal from the public service commission's ruling to the Vermont Supreme Court that court would be confined to the exercise of judicial powers. Mr. Justice Holmes said:

> "This being so, by the rule laid down in *Prentis* v. *Atlantic Coast Line Co.*, the railroad

company was free to assert its rights in the District Court of the United States."

In other words, whenever a case reaches the judicial stage the complaining party has the choice of forum—he may appeal to the state Supreme Court, if appeal is allowed, or he may invoke the jurisdiction of the Federal court.

Prendergast v. *New York Tel. Co.*, 262 U. S. 43-51, 67 L. Ed. 853; *Pacific Tel. & Tel. Co.* v. *Kuykendall*, 265 U. S. 200, 68 L. Ed. 979; *Nelson* v. *First National Bank*, 42 Fed. (2d) 30, by the Eighth Circuit Court of Appeals, and *Pacific Tel. & Tel. Co.* v. *Cushman*, 292 Fed. 930, are exactly in point. In the latter case the Court of Appeals issued a mandamus to compel the District Court to take jurisdiction of a bill in equity filed by a public service corporation to restrain alleged confiscatory rates fixed by the State Commission *although the statutes of the state granted an appeal from the orders of the Commission to the state Supreme Court.*

The 35th section of the amended bill (R., vol. 1, pt. 1, p. 33), alleges that on November 7th, 1930, plaintiff filed with the Commission its special appearance and motion to vacate its rules and regulations, stating that it had commenced this action on September 15th, 1930, for the purpose of enjoining the enforcement of the rules and the Curtailment Act, by which motion it prayed the Commission to set aside its rules in so far as plaintiff is concerned and if this relief is denied that the Commission suspend the enforcement of the penalty provisions of the statute during the pendency

of this action, all of which motion was denied by the Commission on November 20th, 1930.

The 35th section of defendant's answer (R., vol. 1, pt. 1, p. 72), admits these allegations, averring, however, that plaintiff did not appeal from the order of the Commission to the Supreme Court. If plaintiff was required to appeal from every order the Commission made to the Supreme Court there never could be any end to the controversy. Such a proceeding before the Commission would have been entirely futile and the plaintiff was not required to file such a series of motions and go through such vain proceedings.

Love v. *A. T. & S. F. Ry. Co.*, 185 Fed. 321 (8th Cir. Apps.).

SECOND.

Prohibitions of the Fourteenth Amendment are addressed to individuals acting as agents of the state and officers and agents of the state may be enjoined by the Federal courts from using the power of their office to deny any person the rights guaranteed by the Fourteenth Amendment.

Home Telephone & Telegraph Co. v. *City of Los Angeles*, 227 U. S. 278, 57 L. Ed. 510;

Ex parte Commonwealth of Virginia, 100 U. S. 339, 25 L. Ed. 677;

Georgia Power Co. v. *Decatur*, 281 U. S. 505, 74 L. Ed. 999;

L. & N. R. R. Co. v. *Garrett*, 231 U. S. 313, 58 L. Ed. 242;

Oklahoma Operating Co. v. *Love*, 252 U. S. 331, 64 L. Ed. 596.

THIRD.

The rules, regulations and proration orders of the Commission being legislative in nature, are laws within the meaning of the Constitution of the United States and the laws of Congress regulating Federal court jurisdiction.

Lake Erie & Western Railroad Co. v. *State Public Utilities Commission, etc.*, 249 U. S. 422, 63 L. Ed. 687;
Virginia v. *Rives*, 100 U. S. 313, 25 L. Ed. 667;
Philadelphia Co. v. *Stimson*, 223 U. S. 605-638, 56 L. Ed. 570;
Yick Wo. v. *Hopkins*, 118 U. S. 356, 30 L. Ed. 220;
Home Teleph. & Teleg. Co. v. *Los Angeles*, 227 U. S. 278, 296, 57 L. Ed. 510.

FOURTH.

If this Court holds the Curtailment Act is constitutional, nevertheless plaintiff is entitled to an injunction against the enforcement of the Commission's orders and rules if they are (a) in excess of the Commission's powers conferred by the Curtailment Act, or (b) otherwise in conflict with the National Constitution.

Herkness v. *Irion*, 278 U. S. 92-96, 73 L. Ed. 198.

In the *Herkness case, supra*, this Court said, "We have no occasion to consider any of the constitutional questions presented." The court upheld the jurisdiction on the ground that the bill "challenged the

validity under the Federal Constitution of an order of an Administrative Board of the State," and having found that the Administrative Board had exceeded its powers it reversed the judgment of the three-judge court refusing an injunction.

FIFTH.

Plaintiff having filed this suit on September 15th, 1930, challenging the constitutionality of the Curtailment Act and praying for an injunction restraining the Commission from enforcing the same, is entitled to the independent judgment of this Court in the construction of the Curtailment Act, although the Oklahoma Supreme Court (two justices dissenting), in an opinion filed on October 14th, 1930, in Julian Oil and Royalties Co. v. Capshaw, 145 Okla. 237, 292 Pac. 841, construed the statute and on its construction upheld its constitutionality.

On August 28th, 1930, the C. C. Julian Oil and Royalties Company filed a petition in the Oklahoma Supreme Court against the Corporation Commission praying for a writ of prohibition restraining the Commission from enforcing the Curtailment Act. (See R., vol. 2, pt. 3, p. 269.)

We submit:

(*a*) Plaintiff's right to drill having vested and actual drilling of its wells on its oil leases and lands and extract therefrom oil and gas having commenced before the institution of the Julian Oil and Royalties Company case in the Supreme Court, this court will exercise its independent judgment in the construction of the

Curtailment Act and will determine for itself not only the construction of such Act but its validity under the constitution of the State of Oklahoma and the Constitution of the United States.

Burgess v. *Seligman*, 107 U. S. 20, 27 L. Ed. 359;
Great Southern Fire Proof Hotel Co. v. *Jones*, 193 U. S. 532, 48 L. Ed. 778;
Jones v. *Great Southern Fireproof Hotel Co.*, 86 Fed. 370 (6th Cir. Apps. by Judge Lurton);
Folsom v. *Township*, 159 U. S. 611, 40 L. Ed. 278;
City and County of Denver v. *Denver Tramway Corp.*, 23 Fed. (2d) 287 (8th Cir. Apps.);
Fetzer v. *Johnson*, 15 Fed. (2d) 145 (8th Cir. Apps.);
State of Missouri v. *Angle*, 236 Fed. 644 (8th Cir. Apps.);
Mothersead v. *United States F. & G. Co.*, 22 Fed. (2d) 644 (8th Cir. Apps.);
Carroll County v. *Smith*, 111 U. S. 556, 28 L. Ed. 517;
East Alabama Ry. Co. v. *Doe*, 114 U. S. 340, 29 L. Ed. 136;
Oklahoma City v. *Dolese*, 48 Fed. (2d) 734 (10th Cir. Apps.);
Connally v. *General Construction Co.*, 269 U. S. 385, 70 L. Ed. 322;
Black on the Law of Judicial Precedents, p. 484.

(*b*) In so far as the validity and constitutionality of the Commission's rules and regulations here involved are concerned the opinion in the Julian case is not binding on this court because the petition for writ of prohibition involved only the question as to whether

the Commission had *jurisdiction* to make any sort of rules and regulations, rather than the question of the constitutionality of such rules and regulations after having been made. The Julian opinion did not pass upon the constitutionality of the rules and whether those rules are confiscatory or not is an open question for the Federal Courts to decide. The Julian decision merely upholds the constitutionality of the Act and that it conferred jurisdiction upon the Commission. This is emphasized in the concurring opinion of Justice Hunt (145 Okla. 246), 292 Pac. 841, wherein he said that "under numerous decisions of this court the writ will not issue unless it clearly appears that the Commission is wholly without jurisdiction or authority to do what it is attempting to do or is attempting to make an unauthorized application of judicial force," citing Oklahoma authorities.

In *Oklahoma Operating Co.* v. *Love,* 252 U. S. 331, 64 L. Ed. 596, this court held the order of the Commission there involved was a legislative order and that under the 14th Amendment plaintiff was entitled to an opportunity for a judicial review of its contention that the rates were not compensatory. The Commission contended that under the Oklahoma Constitution the validity of its orders could be reviewed by the state Supreme Court on application for writ of prohibition, to which this court replied:

> "The challenge of a prescribed rate as being confiscatory raises a question not as to the scope of the Commission's authority, but of the correctness of the exercise of its judgment,"

citing *Hirsh* v. *Twyford,* 40 Okla. 220.

SIXTH.

This Court is not bound by the decision of the State Supreme Court in the Julian case that the Curtailment Act is not in violation of the National Constitution.

Connally v. *General Construction Co.*, 269 U. S. 385;

Crescent City Live Stock Landing and Slaughter-House Co. v. *Butchers' Union Slaughter-House and Live Stock Landing Co.*, 120 U. S. 141-160;

Piqua Branch of the State Bank of Ohio v. *Knoop*, 16 How. 370, 391;

Encyc. of U. S. Supreme Court Reports, vol. 4, p. 1066.

SEVENTH.

A corporation is a person within the due process and equal protection clauses of the 14th Amendment to the National Constitution.

Louis K. Liggett Co. v. *Baldridge*, 278 U. S. 105, 73 L. Ed. 204;

Frost v. *Corporation Commission*, 278 U. S. 515, 73 L. Ed. 483;

Gulf, Colorado & Santa Fe R. Co. v. *Ellis*, 165 U. S. 150, 41 L. Ed. 666.

EIGHTH.

Equity will restrain the enforcement of a criminal statute where necessary to protect property rights.

Terrace v. *Thompson*, 263 U. S. 216;

Williams v. *Standard Oil Co.*, 278 U. S. 235;

Davis & Farnum Mfg. Co. v. *Los Angeles,* 189 U. S. 207, 47 L. Ed. 778;
Wadley S. R. Co. v. *Georgia,* 235 U. S. 651, 59 L. Ed. 411;
Truax v. *Raich,* 239 U. S. 33, 60 L. Ed. 131, L. R. A. 1916-D, 545;
Dobbins v. *City of Los Angeles,* 195 U. S. 223, 49 L. Ed. 169;
Daly v. *Elton,* 195 U. S. 242, 49 L. Ed. 177;
Philadelphia Co. v. *Stimson,* 223 U. S. 605, 56 L. Ed. 570;
Campbell v. *Motion Picture Machine, etc.,* 151 Minn. 220, 27 A. L. R. 631.

The penalty of 30 days imprisonment or $5,000.00 fine or both, imposed by Section 8 of the Act, is for *"violating the provisions of this Act"* and not for violating the rules and regulations of the Commission. Also the penalty of a receivership imposed by Section 9 of the Act is for *"violating the provisions of this Act"* and not for violating the rules and regulations of the Commission.

In *United States* v. *Eaton,* 144 U. S. 677, 36 L. Ed. 591, the court had under consideration an Act of August 2nd, 1886, imposing special taxes on manufacturers of oleomargarine, etc. The defendant was indicted for violating the regulations of the Commissioner of Internal Revenue made with the approval of the Secretary of the Treasury. The court said that "It is well settled that there are no common law offenses against the United States" and therefore held the indictment would not lie.

Under Section 1500, Okla. Comp. St. 1921, "No act or omission shall be deemed criminal or punishable except as prescribed or authorized by this code", which means all common law offenses are abolished in Oklahoma.

To the same effect see *Stewart* v. *State*, 4 Okla. Cr. 564, 109 Pac. 243.

United States v. *Grimaud*, 220 U. S. 506, is not in point because the statute made it a criminal offense to violate a rule and regulation of the Secretary.

NINTH.

The jurisdiction of the District Court in a suit arising under the National Constitution and that of the Supreme Court on appeal, extends to the determination of all questions in the case, including questions of state law, and this Court may decide the Federal questions adverse to the party raising them or omit to pass on them, but decide the case on local or state questions only.

Greene v. *L. & I. R. Co.*, 244 U. S. 499;
Hopkins v. *Southern California Teleph. Co.*, 275 U. S. 393;
Davis v. *Wallace*, 257 U. S. 478;
Siler v. *L. & N. R. R. Co.*, 213 U. S. 191;
Ohio Tax Cases, 232 U. S. 576.

APPENDIX E.

Quotations from Opinions Cited on Pages 38 and 39 of This Brief.

In *Barnard* v. *Monongahela Natural Gas Co.*, 216 Pa. 362, 65 Atl. 801, the Pennsylvania Supreme Court adopted the opinion of the Court below answering in the affirmative this question: "Can a landowner in gas territory drill a well on his farm close to the line of his adjoining landowner and draw from the land of the latter three-fourths of the gas that his well may produce without so invading the property rights of the adjoining landowner as to be legally accountable therefor?" The Court said:

> "'The right of every landowner to drill a well on his own land at whatever spot he may see fit' certainly must be conceded. If, then, the landowner drills on his own land at such a spot as best subserves his purposes, what is the standing of the adjoining landowner whose oil or gas may be drained by this well? *He certainly ought not to be allowed to stop his neighbor from developing his own farm.* There is *no certain way of ascertaining* how much of the oil and gas that comes out of the well was when in situ under this farm and how much under that. What then has been held to be the law? It is this, as we understand it, *every landowner or his lessee* may locate his wells *wherever he pleases, regardless of the interests of others.* He may distribute them over the whole farm or locate them only on one part of it. He may crowd the adjoining farms so as to enable him to draw the oil and gas from them. What then can the neighbor do? *Nothing; only go and do likewise.* He must protect his own oil and

gas. He knows it is wild and will run away if it finds an opening and it is his business to keep it at home. This may not be the best rule; but neither the Legislature nor our highest court has given us any better. No doubt many thousands of dollars have been expended 'in protecting lines' in oil and gas territory that would not have been expended if some rule had existed by which it could have been avoided. Injunction certainly is not the remedy. If so, just how far must the landowner be from the line of his neighbor to avoid the blow of 'this strong arm of the law'?"

In *People's Gas Co.* v. *Tyner,* 131 Ind. 277, 31 Am. St. Rep. 433, the Court held that a landowner has the right to increase the flow of natural gas by shooting the well on his premises though by so doing he will draw off and diminish the supply of natural gas in the lands of another.

In *Kelley* v. *Ohio Oil Co.,* 57 Ohio St. 317, 63 Am. St. Rep. 721, the Court held that an owner or lessee of oil lands has an absolute right to drill an oil well near the division line of his land, so long as all operations are confined to the lands upon which the well is drilled, and whatever gets into such well, either by percolation or by flowing through unknown natural underground channels, belongs to the owner of the well, no matter where it comes from. The Court said:

"The right to drill and produce oil on one's own land is absolute and cannot be supervised or controlled by a court, or an adjoining landowner. So long as the operations are legal, their reasonableness cannot be drawn in question," and pointed out in *Letts* v. *Kessler,* 54 Ohio St. 73, that "it is intolerable that the owner of real property, before making improvements on his own lands, should be compelled to submit to what

his neighbor, of a court of equity, might regard as a reasonable use of his property."

In *Higgins Oil & Fuel Co. v. Guaranty Oil Co.*, 145 La. 233, 82 So. 206, 5 A. L. R. 411, the Court held that the owner of land under which there is fugitive mineral oil can not complain that his neighbor uses a pump in a well located on his property, although the effect is to drain oil from beneath land of another. The Court also held that the owner can not be deprived *even by statute of the legitimate use of his property because* it may cause a real damage to his neighbor. That is an exhaustive opinion discussing the meaning of "infringement of right." It refers to and quotes the Civil Law Writers and Code Napoleon and points out the difference between the use of property for a beneficial purpose and its use with no benefit to the owner but injury to the neighbor. It points out the right of an owner to construct a building which cuts off his neighbor's light or drill a hole on his land into percolating waters that diverts water from his neighbor's land to his own land. One cannot exercise his common right "for the sole purpose of causing injury" to his neighbor. "If the owner who uses his right does it through malice, from a desire to injure, without any profit to himself, will he be held bound to repair the damage he causes, although he does not infringe any right?" was answered by the Roman Law by saying, "Would it not be to encourage this perversity, if a right were allowed to be used for the sole purpose of injuring another." The Louisiana Supreme Court quoted the following from the Roman authorities:

> "And that has been the view taken by the courts. An owner constructs a building which cuts off his neighbor's light. In so doing he but exercises a right he has, and therefore owes no reparation of the damage he causes to the neigh-

bor. But he does more; he erects in front and almost against the window of his neighbor, part of which is already masked by the new building, a dummy chimney, beginning on the roof, resting on the rafters, at the extreme corner of the gable end of the building, and which cuts off all the light from the window. The Court of Colmar ordered the suppression of the dummy chimney. It acknowledges that the owner can, in strictness (sic), abuse of his property, but on one condition, that he does not do it for the purpose of injury. Rights are serious things and must be used seriously. Beyond that serious use there is no right, but only wickedness, and justice cannot sanction an act prompted by malevolence.

"An owner constructing works on his land *diminishes the volume of a spring,* the benefit of which his neighbor has been having. *He is within his right.* If he thereby causes an injury to his neighbor, the latter cannot complain; for he has *not the absolute ownership of the waters.* But, if it has been by malice that the works have been undertaken, for the sole purpose of injuring the neighbor, we have no longer the exercise of a right, but spitefulness, and he who abuses malignantly of his right ought to repair the damage he causes. This was the decision of the Court of Lyons in the following case: A mineral spring spreads over several tracts. One of the owners sets up a pump for getting a larger quantity of the water, *not for using it, but for pouring it, in pure waste,* and we will add, through spite, into a river. The Court condemned him in damages, but without ordering the suppression of the pump. We think that in the latter connection the Court was too conservative. From the moment that an act can be characterized as illicit the

> owner can no longer invoke any right of ownership; now an unlawful act should disappear."

In the Louisiana case the plaintiff held an oil lease adjoining another tract on which defendant held a similar lease. The plaintiff sunk a well on its tract "and was drawing oil from it by means of a pump at the rate of some 124 barrels a day; when the defendant sunk a well on its tract approximately 400 feet from plaintiff's well. This well of defendant proved a nonproducer, and was abandoned. Through some underground communication it lets air into the radius affected by plaintiff's pump, thereby reducing the suction power of the pump, and as a consequence reducing markedly its production. By closing this dry well, which may be done with no trouble or expense by simply putting back the plug that has been taken out, the capacity of plaintiff's pump is at once restored. Defendant refuses to close it; and plaintiff brings this suit to compel defendant to do so, and also to recover the damages suffered up to now, and continuously being suffered, as the result of the reduced production of the pump." The Louisiana Supreme Court reversed the judgment in favor of defendant and held that defendant was not the owner of the oil and gas under his land and had no right to interpose any obstacle to diminish the capacity of plaintiff's pump to suck oil from underneath defendant's land, and said:

> "From these excerpts it is clear that cases like the present are not to be decided by the application of any broad or inflexible rule, but by a careful weighing of all the circumstances attending them, by diagnosing them, to use the expression of Baudry-Lacantinerie and Chauveau, with the aid and guidance of the two principles, that the owner must not injure seriously any right of his neighbor, and, even in the absence of any right

on the part of the neighbor, must not in any unneighborly spirit, do that which, while of no benefit to himself, causes damage to the neighbor.

"Defendant does not contest the right of plaintiff to get out of its land all the oil it possibly can, and by means of a well, but contests plaintiff's right to do this by means of a pump, because a pump sucks the oil from under defendant's land. The argument is that plaintiff may appropriate the oil passing from defendant's land to plaintiff's, provided the oil passes, or flows, from the one tract to the other 'naturally,' that is, by gravity, and not as the effect of the use of artificial means.

"So far as artificiality is concerned, we do not see the difference between a well and a pump; both are artificial; both cause the oil to flow from the neighbor's land; and both produce that effect by creating a vacuum which the oil from the neighbor's land comes in to fill. In both cases the oil flows from the neighbor's land by gravity. The fact that some of the oil which plaintiff's pump is producing may come from defendant's land can make no difference; for in the case of a flowing well so close to the boundary line that one-half of its product would to a reasonable certainty be known to be coming from the adjoining tract the owner of this tract would hardly, we imagine, claim either the ownership of one-half of the oil or the right to close the well; *and the reason would be that an owner of land does not own the fugitive oil beneath it.*

"The analogy between the subterranean oil and subterranean or percolating waters is, we believe, complete, and defendant cites the case of *Forbell* v. *New York,* 164 N. Y. 522, 51 L. R. A. 695, 79 Am. St. Rep. 666, 58 N. E. 644, where the

operation of a pump was enjoined because it had the effect of drying up the surface of the land to the great damage of the neighbor. That decision would be in point if the surface of defendant's land was being injured by plaintiff's pump. True, the Court reasoned the case somewhat differently; but that was the true ground of the decision, for the Court admitted that, so far as the water was concerned, the complainant had no ownership of it; and of course, if so, the taking of it, whether by means of a pump or otherwise, invaded no right of the complainant, and therefore furnished no ground of action. But invasion of the surface did, because the complainant had the right to use and enjoy the surface uninterfered with by the pump of the defendant city. In a pumping case where no surface right of the neighbor was being interfered with, but only the percolating water was being taken, the Supreme Court of Mississippi denied an injunction, although the complainant's supply of water was being thereby reduced. *Clarke County* v. *Mississippi Lumber Co.*, 80 Miss. 535, 31 So. 905. In the civil law the right to drain off by means of a deeper well the subterranean water of the neighbor is well settled, and apparently in the common law too. 20 Am. & Eng. Enc. Law, 314. Judge Thornton, in his work on Oil & Gas, 2d ed., p. 49, says that if pumps could not be used oil territory would be practically useless, and few wells would ever be drilled. And, of course, what is meant by this is that the neighbor cannot complain, even though possibly, or probably, the oil under his land is being drained off by the pump.

"All operators in the oil field in question, including defendant, are using pumps; what good ground, then, could defendant have for denying plaintiff the right to do that same thing?

"Plaintiff's right to operate this pump would appear, therefore, to be clear, and that defendant's well, or air pipe, is seriously interfering with the operation of the pump, is one of the facts alleged in the petition which for present purposes must be taken for true.

"Were defendant leaving this well open for some purpose of utility other than the supposed utility of preventing the drainage of the oil from under defendant's land, a different case might perhaps be presented; but the allegation, which must be taken for true, is that leaving this well open is of no benefit to defendant. It will be noted that this action of defendant in leaving this well open has the effect not merely of preventing plaintiff from drawing the oil from under defendant's land, but also from under plaintiff's own land; so that an unquestioned right of plaintiff is being interfered with."

See, also:

Louisiana Gas & Fuel Co. v. *White Bros.*, 157 La. 728, 103 So. 23.

In *Calor Oil & Gas Co.* v. *Franzell*, 128 Ky. 715, 109 S. W. 328, the Court said:

"If it be true, as said in the briefs, that the natural gas in the district of Meade county is contained in a common reservoir underlying the whole area, of necessity it follows that the gas company's use of its wells tends to exhaust the wells of the heating company; and it is equally true that the piping of gas by the heating company from its wells tends to exhaust the gas company's wells; and undoubtedly the operation of two gas companies in the same field (assuming that the quantity of gas is limited)

will exhaust it sooner than one of them would. *But each has the legal right to the legitimate use of the gas underlying its own property,* and neither can complain of such use by the other. We have already held, in the cases of *Commonwealth* v. *Trent*, etc., 117 Ky. 34, 77 S. W. 390, and *Calor Oil & Gas Co.* v. *McGehee*, 117 Ky. 71, 77 S. W. 368, that one who illegitimately wastes or destroys the gas of a district may be punished under the criminal statutes of the state, and may also be enjoined from committing such wrongful acts; *but all parties owning gas wells in the district are free to make any legitimate use of the gas they choose, and the fact that this legitimate use tends to exhaust the supply gives the other owners of gas wells in the district no just ground of complaint.* The court knows, as a part of the history of the country, that natural gas districts after flourishing for a while are frequently entirely exhausted, and that manufacturing and power plants established in the district, and dependent upon the use of the gas for fuel, are forced to move elsewhere. This may happen to the district under consideration; *but, as said before, if this results from legitimate sales by the various owners to their customers, no one of them has a just ground of complaint. They have all enjoyed the property while it existed, and when it is exhausted they, of course, can no longer enjoy it.*"

In *Jones* v. *Forest Oil Co.*, 194 Pa. 379, 48 L. R. A. 748, the court held that a gas pump may lawfully be used to increase the production of an oil well although the production of wells on adjoining property is thereby diminished. In drawing the distinction between the exercise of a legal right for a useful pur-

pose and the exercise of a right resulting in no benefit to the owner, the court said:

> "In regard to wells and springs, the law is well settled that the owner of land is not entitled to recover for injuries to his wells and springs caused by the acts of an adjoining owner, if the injury results from a *lawful exercise* of the rights of the adjoining owner, *on his own property*, and without malice or negligence. An owner of land may dig a well upon his property and if, in so doing, he taps the hidden flow of water, which supplies his neighbor's spring, it is a loss to the neighbor for which the law provides no remedy."

The court held that the plaintiff in that case had no right to assume there is a certain, fixed amount of oil and gas under his farm in which he has an absolute property right, and said:

> "In *Ballard* v. *Tomlinson*, L. R. 29 Ch. Div. 115, it was held that a landowner has the right to all of the percolating stream under his land, the court saying: 'This percolating water below the surface of the earth is therefore a *common reservoir* or source in which nobody has any property, but of which everybody has, so far as he can, the right of *appropriating* the whole. The principle of natural user does not apply at all. The plaintiff, if he has a right to use anything in nature, has a right to exercise that user by all the skill and invention of which man is capable; and it seems to me that as long as the plaintiff uses only lawful means as against his neighbor, however ingenious or however artificial those means may be, his right to appropriate the common source is not diminished be-

cause he uses the most artificial or most ingenious methods.' If it is lawful to take water from a substrata by the 'exercise of all the skill and invention of which man is capable,' we see no reason why it is not lawful to produce oil by those means, especially as the possession of the soil for purposes of tillage gives the owner no actual possession of the oil and gas underlying."

In *Peterson* v. *Grayce Oil Co.*, 37 S. W. (2d) 367, the Texas Court of Civil Appeals handed down an opinion on January 31st, 1931, holding that a leaseholder has a right to the natural flow of the oil from sources not located under his lease but common to the holders of other leases supplied from the so-called common source. The suit was an action for damages to recover the value of oil which plaintiff alleged had been lost to it by defendant's operation of a vacuum pump. The Railroad Commission, under authority of an Act of the Legislature, had promulgated a rule prohibiting future installation of vacuum pumps or other devices for the purpose of putting a vacuum on any gas or oil bearing stratum, except in certain cases. The Legislature had conferred power upon the Railroad Commission "over all common carrier pipe lines conveying oil or gas in Texas, and over all oil and gas wells in Texas, and over all persons, associations or corporations owning or operating pipe lines in Texas * * *," and empowered the Commission "to make all necessary rules and regulations for the government and regulation of such persons, associations, and corporations and their operations * * *." While sustaining the power of the Legislature to authorize the Commission to prohibit the use of vacuum pumps the court cited and commented upon *Oxford Oil Company* v. *Atlantic Oil Producing Co.*, 22 Fed. (2d) 597, and also *Ohio Oil Company* v. *Indiana*, 177 U. S. 190, and

Lindsley v. *Natural Carbonic Gas Company*, 220 U. S. 61, and said:

"Although oil is of a fugitive nature and may, as the result of the operation of natural subterranean agencies, pass from one location to another, yet it is well settled by the decisions of our Supreme Court that oil in place belongs to the owner of the title to the land, and that an oil lease executed by the fee simple owner conveys an interest in realty. See *Waggoner Estate* v. *Sigler Oil Co.*, 19 S. W. (2d) 27, by our Supreme Court in an opinion by Justice Greenwood, in which many of the former decisions of the same court are extensively reviewed. From that rule of decisions it follows that oil in place and belonging to the title owner or leaseholder of the land where it is located may, *like surface accretions of the soil*, be lost to that owner and become the property of the title holder or leaseholder of an adjoining tract whenever such flow occurs solely through the operation of *natural agencies in a normal manner*, as distinguished from artificial means applied to stimulate such a flow. * * *

"The right of plaintiffs to an undisturbed flow of oil, in its *natural course, from the main reservoir or source*, even though that reservoir or source is *not located on their lease*, is appurtenant to their title to the lease; but that right is common also to the holders of other leases which are supplied with oil from the same common source. All of such leaseholders have the right to recover the oil, and the only method so to do is to drill wells, and to pump them, in the absence of a flow without pumping. Necessarily the *first wells drilled* draw more from the common supply than others drilled later; and thus

there may be an unequal distribution among different leaseholders. But from the *very nature* of the situation that result is unavoidable, and loss to subsequent drillers occurring in that manner may be designated as damnum absque injuria; the policy of law being to *favor the diligent.* However, according to the rule which seems to be established by the decisions, and which appears to be founded upon elementary principles of right and justice, the right of one leaseholder to thus acquire more than his pro rata portion of the common reservoir is limited to the production of oil from a *natural flow* or from pumping by ordinary methods, to the *exclusion of the artificial method of vacuum pumps,* which is forbidden by Rule 40 of the Railroad Commission. Such is the effect of the decision of the United States Supreme Court in *Ohio Oil Co. v. Indiana,* 177 U. S. 190, 20 S. Ct. 576, 583, 44 L. Ed. 729. In that case the State of Indiana, through its Attorney General, procured an injunction restraining the Ohio Oil Company from permitting the waste of natural gas from several wells drilled upon its leases, upon allegations, in substance, that the supply of natural gas which had been enjoyed by citizens in the surrounding territory had been greatly diminished. The suit was based upon the provisions of a statute of the state forbidding such waste. The statute was attacked by the oil company on the ground that its enforcement would constitute a taking of private property without adequate compensation, and therefore amounted to a denial of due process of law in violation of the Fourteenth Amendment of the Constitution. That contention was overruled, and the decree granting injunctive

relief against the oil company was affirmed In the opinion reference was made to the rule of decisions in the state of Indiana, to the effect that oil found in land does not become the property of the lease owner until it is reduced to possession, and had this to say:

"'If the analogy between animals ferae naturae and mineral deposits of oil and gas, stated by the Pennsylvania court and adopted by the Indiana court, instead of simply establishing a similarity of relation, proved the identity of the two things, there would be an end of the case. This follows because things which are ferae naturae belong to the "negative community;" in other words, are public things subject to the absolute control of the State, which, although it allows them to be reduced to possession, may at its will not only regulate, but wholly forbid, their future taking. *Geer* v. *Connecticut*, 161 U. S. 519, 525, 40 L. Ed. 793, 795, 16 S. Ct. 600. But whilst there is an analogy between animals ferae naturae and the moving deposits of oil and natural gas, there is *not identity* between them. Thus, the owner of land has the exclusive right on his property to reduce the game there found to possession, just as the owner of the soil has the exclusive right to reduce to possession the deposits of natural gas and oil found beneath the surface of his land. The owner of the soil cannot follow game when it passes from his property; so, also, the owner may not follow the natural gas when it shifts from beneath his own to the property of someone else within the gas field. It being true as to both animals ferae naturae and gas and oil, therefore, that whilst the right to appropriate and become the owner exists, proprietorship does not

take being until the particular subjects of the right become property being reduced to actual possession. *The identity, however, is for many reasons wanting.* In things ferae naturae *all* are endowed with the power of seeking to reduce a portion of the public property to the domain of private ownership by reducing them to possession. In the case of natural gas and oil *no such right exists in the public.* It is vested only in the owners in fee of the surface of the earth within the area of the gas field. This difference points at once to the distinction between the *power which the lawmaker may exercise as to the two.* In the one, *as the public are the owners,* every one may be absolutely prevented from seeking to reduce to possession. No devesting of private property under such a condition can be conceived, because the public are the owners, and the enacting by the State of a law as to the public ownership is but the discharge of the governmental trust resting in the State as to property of that character. *Geer* v. *Connecticut,* 161 U. S. 519, 525, 40 L. Ed. 793, 795, 16 S. Ct. 600. *On the other hand,* as to gas and oil the surface proprietors within the gas field *all have the right to reduce to possession the gas and oil beneath. They could not be absolutely deprived of this right which belongs to them without a taking of private property.* But there is a coequal right in them all to take from a common source of supply the two substances which in the nature of things are united, though separate. It follows from the essence of their right and from the situation of the things as to which it can be exerted, that the use by one of his power to seek to convert a part of the common fund to actual possession may result in an undue proportion being attributed to

one of the possessors of the right to the detriment of the others, or by waste by one or more to the annihilation of the rights of the remainder. Hence it is that the legislative power, from the peculiar nature of the right and the objects upon which it is to be exerted, can be manifested for the purpose of *protecting all the collective owners*, by securing a just distribution, to arise from the enjoyment by them, of their privilege to reduce to possession, and to reach the like end by preventing waste. This necessarily implied legislative authority is borne out by the analogy suggested by things ferae naturae, which it is unquestioned the legislature has the authority to forbid all from taking, in order to protect them from undue destruction, so that the right of the common owners, the public, to reduce to possession, may be ultimately efficaciously enjoyed. *Viewed, then, as a statute to protect or to prevent the waste of the common property of the surface owners, the law of the State of Indiana* which is here attacked because it is asserted that it divested private property without due compensation, in substance, is a statute protecting private property and preventing it from being taken by one of the common owners without regard to the enjoyment of the others.' "

APPENDIX F.

(House Bill No. 136, Chapter 207, Session Laws 1917, Page 385, Codified as Sections 8013-8017, Compiled Oklahoma Statutes 1921.

An Act providing for the creation of an oil and gas department under the jurisdiction of the Corporation Commission, authorizing the Corporation Commission to appoint a chief oil and gas conservation agent, and conferring exclusive jurisdiction on the Corporation Commission in reference to the conservation of oil and gas, and the inspection of gasoline and oil, the product of crude petroleum, and repealing all acts or parts of acts in conflict therewith, and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA: CORPORATION COMMISSION—OIL AND GAS DEPARTMENT.

SECTION 1. The Corporation Commission is hereby empowered and authorized to *create and establish an oil and gas department* under the jurisdiction and supervision of the Corporation Commission, and is hereby authorized to appoint with the approval and consent of the Governor, *a chief oil and gas conservation agent* who shall have charge of the oil and gas department herein authorized.

EXCLUSIVE JURISDICTION OVER OIL AND GAS MATTERS CONFERRED ON CORPORATION COMMISSION.

SECTION 2. All authority and duties *now conferred* upon the Corporation Commission or *other departments of the State government in reference to the conservation of oil and gas* and the drilling and *operating* oil and gas wells and the construction and regulation of oil and gas pipe lines, are hereby conferred exclusively upon the Corporation Commission.

RULES AND REGULATIONS—ABANDONED OIL AND GAS WELLS.—PLUGGING.

SECTION 3. The Corporation Commission is hereby authorized to prescribe rules and regulations for the plugging of all abandoned oil and gas wells. The same shall be plugged under the direction and supervision of the conservation agents of the Corporation Commission as may be prescribed by the Corporation Commission. All orders and regulations in reference to plugging wells shall be made after general hearing *as now prescribed by law for the promulgation of orders by the Corporation Commission.*

JURISDICTION TO INSPECT ALL OIL PRODUCTS COMPRESSED.

SECTION 4. Jurisdiction is hereby conferred upon the Corporation Commission to inspect all oils and liquids the product of petroleum or other bituminous substances or into which the product of petroleum enters, by whatever name called, which may or can be used for illuminating, heating or power purposes manufactured in this State or brought into it, before the same are consumed, used, sold or offered to be sold or disposed of to merchants, consumers, or other persons within this State, and the Corporation Commission is hereby authorized to appoint, with the approval of the Governor, oil inspectors *who shall perform the duties now prescribed by Chapter 96, Session Laws 1915,* and to perform such other duties as may be required by general rules and regulations of the Corporation Commission.

COMPENSATION FOR OIL INSPECTOR.

SECTION 5. The Oil Inspector hereby authorized shall receive the compensation now provided in Chapter 96, Session Laws 1915, for the inspection of oils and liquids.

REPEAL OF CONFLICTING ACTS.

SECTION 6. All acts and parts of acts in conflict herewith are hereby repealed.

EMERGENCY.

SECTION 7. For the preservation of the public peace, health and safety an emergency is hereby declared to exist, by reason whereof this Act shall take effect and be in force from and after its passage and approval.

Approved February 16, 1917.

APPENDIX G.

Session Laws 1915.

CHAPTER 197.

Natural Gas—Waste.

(House Bill No. 395.)

AN ACT to conserve natural gas in the State of Oklahoma, to prevent waste thereof, providing for the equitable taking and purchase of same, conferring authority on the Corporation Commission, prescribing a penalty for violation of this Act, repealing certain acts, and declaring an emergency.

Be it Enacted by the People of the State of Oklahoma:

Waste Prohibited.

SECTION 1. That the production of natural gas in the State of Oklahoma, in such manner, and under such conditions as to constitute waste, shall be unlawful.

Waste Defined.

SECTION 2. That the term waste, as used herein in addition to its ordinary meaning, shall include escape of natural gas in commercial quantities into the open air, the intentional drowning with water of a gas stratum capable of producing gas in commercial quantities, underground waste, the permitting of any natural gas well to wastefully burn and the wasteful utilization of such gas.

Conservation of Gas.

SECTION 3. That whenever natural gas in commercial quantities, or a gas bearing stratum, known to contain natural gas in such quantity, is encountered in any well

drilled for oil or gas in this state, such gas shall be confined to its original stratum until such time as the same can be produced and utilized without waste, and all such strata shall be adequately protected from infiltrating waters. Any unrestricted flow of natural gas in excess of two million cubic feet per twenty-four hours shall be considered a commercial quantity thereof; provided, that if in the opinion of the Corporation Commission, gas of a lesser quantity shall be of commercial value, said Commission shall have authority to require the conservation of said gas in accordance with the provisions of this Act; and provided, further, the gauge of the capacity of any gas well shall not be taken until such well has been allowed an open flow for the period of three days.

Excess Gas Supply—Apportionment.

SECTION 4. That whenever the full production from any common source of supply of natural gas in this state is in excess of the market demands, then any person, firm or corporation, having the right to drill into and produce gas from any such common source of supply, may take therefrom only such proportion of the natural gas that may be marketed without waste, as the natural flow of the well or wells owned or controlled by any such person, firm or corporation bears to the total natural flow of such common source of supply having due regard to the acreage drained by each well, so as to prevent any such person, firm or corporation securing any unfair proportion of the gas therefrom; provided, that the Corporation Commission may by proper order, permit the taking of a greater amount whenever it shall deem such taking reasonable or equitable. The said commission is authorized and directed to prescribe rules and regulations for the determination of the natural flow of any such well or wells, and to regulate the taking of natural gas from any or all such common

sources of supply within the state, so as to prevent waste, protect the interests of the public, and of all those having a right to produce therefrom, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another.

"Common Purchaser"—Fair Treatment.

SECTION 5. That every person, firm or corporation, now or hereafter engaged in the business of purchasing and selling natural gas in this state, shall be a common purchaser thereof, and shall purchase all of the natural gas which may be offered for sale, and which may reasonably be reached by its trunk lines, or gathering lines without discrimination in favor of one producer as against another, or in favor of any one source of supply as against another save as authorized by the Corporation Commission after due notice and hearing; but if any such person, firm or corporation, shall be unable to purchase all the gas so offered, then it shall purchase natural gas from each producer ratably. It shall be unlawful for any such common purchaser to discriminate between like grades and pressures of natural gas, or in favor of its own production, or of production in which it may be directly or indirectly interested, either in whole or in part, but for the purpose of prorating the natural gas to be marketed, such production shall be treated in like manner as that of any other producer or person, and shall be taken only in the ratable proportion that such production bears to the total production available for marketing. The Corporation Commission shall have authority to make regulations for the delivery, metering and equitable purchasing and taking of all such gas and shall have authority to relieve any such common purchaser, after due notice and hearing, from the duty of purchasing gas of an inferior quality or grade.

Hearings Before Corporation Commission—How Conducted.

SECTION 6. That any person, firm or corporation, or the Attorney General, on behalf of the state may institute proceedings before the Corporation Commission, or apply for a hearing before said commission, upon any question relating to the enforcement of this Act; and jurisdiction is hereby conferred upon said commission to hear and determine the same, said commission shall set a time and place when such hearing shall be had and give reasonable notice thereof to all persons or classes interested therein by publication in some newspaper or newspapers having general circulation in the state, and shall in addition thereto cause notice to be served in writing upon any person, firm or corporation, complained against in the manner now provided by law for serving summons in civil actions. In the exercise and enforcement of such jurisdiction said commission is authorized to summon witnesses, make ancillary orders, and use such means and final process including inspection and punishment as for contempt, analogous to proceedings under its control over public service corporations as now provided by law.

Appeals to Supreme Court.

SECTION 7. That appellate jurisdiction is hereby conferred upon the Supreme Court of this state to review the orders of said commission made under this Act. Such appeal may be taken by any person, firm or corporation, shown by the record to be interested therein, in the same manner and time as appeals are allowed by law from other orders of the Corporation Commission. Said orders so appealed from, may be superseded by the commission or by the Supreme Court upon such terms and conditions as may be just and equitable.

Power of Corporation Commission—Rules and Regulations.

SECTION 8. That the Corporation Commission shall have authority to make regulations for the prevention of waste of natural gas, and for the protection of all natural gas, fresh water, and oil bearing strata encountered in any well drilled for oil or natural gas, and to make such other rules and regulations, and to employ or appoint such agents, with the consent of the Governor, as may be necessary to enforce this Act.

Acceptance by Pipe Lines.

SECTION 9. Before any person, firm or corporation shall have, possess, enjoy or exercise the right of eminent domain, right of way, right to locate, maintain, construct or operate pipe lines, fixtures, or equipments belonging thereto or used in connection therewith, for the carrying or transportation of natural gas, whether for hire or otherwise, or shall have the right to engage in the business of purchasing, piping, or transporting natural gas, as a public service, or otherwise, such person, firm or corporation, shall file in the office of the Corporation Commission a proper and explicit authorized acceptance of the provisions of this Act.

Duties of Mine Inspector Unchanged.

SECTION 10. That nothing contained in this Act shall be construed to interfere with any duties now imposed by law upon the Chief Mine Inspector of the state or his deputies.

Validity of Several Sections of Act Independent.

SECTION 11. That the invalidity of any section, subdivision, clause, or sentence of this Act shall not in

any manner affect the validity of the remaining portion thereof.

Penalties for Violation.

SECTION 12. That in addition to any penalty that may be imposed by the Corporation Commission for contempt, any person, firm or corporation, or any officer, agent or employee thereof, directly or indirectly violating the provisions of this Act, shall be guilty of a misdemeanor, and upon conviction thereof, in a court of contempt jurisdiction, shall be punished by a fine in any sum not to exceed five thousand dollars ($5,000.00) or by imprisonment in the county jail not to exceed thirty (30) days, or by both such fine and imprisonment.

Emergency.

SECTION 13. For the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this Act shall take effect and be in force from and after its passage and approval.

Approved March 30, 1915.

(1607)

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In the Supreme Court of the United States

October Term, 1931.

No. 485

CHAMPLIN REFINING COMPANY, *Appellant,*

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, AND PAUL WALKER, E. R. HUGHES, AND C. C. CHILDERS, ETC., *ET AL., Appellees.*

No. 486

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, AND PAUL WALKER, E. R. HUGHES, AND C. C. CHILDERS, ETC., *ET AL., Appellants,*

vs.

CHAMPLIN REFINING COMPANY, *Appellee.*

Brief for Appellees on the Appeal in No. 485, and for Appellants on the Cross-Appeal in No. 486.

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IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1931.

No. 485

CHAMPLIN REFINING COMPANY, *Appellant,*

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, AND PAUL WALKER, E. R. HUGHES, AND C. C. CHILDERS, ETC., *ET AL., Appellants.*

No. 486

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, AND PAUL WALKER, E. R. HUGHES, AND C. C. CHILDERS, ETC., *ET AL., Appellants,*

vs.

CHAMPLIN REFINING COMPANY, *Appellee.*

BRIEF FOR APPELLEES ON THE APPEAL IN NO. 485, AND FOR APPELLANTS ON THE CROSS-APPEAL IN NO. 486.

May It Please the Court:

Statement of the Case.

Each of the parties in the District Court have appealed from the final decree (R. Vol. I, Pt. 2, p. 248). The two ap-

peals are presented on a single record and are argued and submitted together as one case. The appeal in No. 486 is a cross appeal.

The appeal in No. 486 was duly perfected, and a statement, particularly disclosing the basis on which it is contended this court has jurisdiction to review on appeal the judgment or decree below, has been filed in compliance with paragraph 1 of Rule 12.

In No. 485, the plaintiff below has appealed from so much of the decree as sustained the constitutional validity of certain sections of the statute of the State of Oklahoma, originally embraced in sections 1, 3, 4, 5, 6, 7 and 10 of the Act of the Oklahoma Legislature, Sessions Laws 1915, page 35, approved February 11, 1915 (quoted in brief for appellant Champlin Refining Company, pp. 2-6), and certain orders of the Corporation Commission made pursuant thereto (contained in part 2 of Vol. II of the record), and refusing to enjoin the enforcement thereof.

In No. 486, the defendants below have appealed from so much of said decree as perpetually enjoined and restrained them from enforcing or attempting to enforce the provisions of sections 8 and 9 of the said Act approved February 11, 1915 (R. Vol. I, Pt. 2, pp. 393-399). They filed their statement of points to be relied upon (R. *ibid* 412).

The case was heard and determined in the District Court by three judges, as required by section 266 of the Judicial Code (Sec. 380, U. S. C. A.), two of whom were circuit judges.

The court below, one judge dissenting to parts there-

of, adopted and filed findings of fact covering all issues of fact (R. Vol. I, Pt. 2, pp. 177-212).

The court, one judge dissenting in part, also separately stated and filed its conclusions of law (R. Vol. 1, Pt. 2, pp. 213-217).

There being a division of the court, two written opinions were filed, Circuit Judges Cotteral and Phillips expressing the majority opinion (R. Vol. I, Pt. 2, p. 218) and District Judge Kennamer expressing the minority view (R. Vol. I, Pt. 2, p. 229). 51 Fed. (2d) 823.

Beginning on page 7, and extending to page 31 of the brief of appellant, are statements of certain facts. We cannot agree to the correctness of these statements, except the quotations from the findings of the trial court on pages 8 and 9. There are inaccuracies and omissions therein. Some of the statements are off the record, and the remainder are counsel's interpretation and version of parts of the facts rather than the facts found by the trial court. In plaintiff's statement of the points to be relied upon in this court (R. Vol. I, Pt. 2, p. 406) none of said findings are questioned.

Since it will be necessary to consider the findings and evidence in connection with the various questions raised, we shall endeavor to state the pertinent facts in connection with the discussion of each question, which will fully develop the material points of disagreement.

At this place we content ourselves for a statement of the facts by reference to the findings of the trial court which are full and comprehensive, and the correctness of which, as stated, is not questioned in this court. Neither do the appellants in No. 486 question them.

However, in order to direct attention to the particular subject-matter around which the controversy revolves, we desire to say:

(a) Plaintiff below owns nine oil-producing wells located in the town-lot portion of what is known as the Oklahoma City pool. (Finding IV, R. Vol. I, Pt. 2, pp. 181-182.) Said pool is generally described in Finding VI (R. *ibid* 184-185). The 746 producing oil wells located therein, the daily potential capacity of which is 2,987,993 barrels of oil (when computed according to the revised formula adopted by the Commission, February 10, 1931, for determining the potentials of the wells in said pool; see Finding XIV, R. *ibid* 193-194), are under proration by orders, rules and regulations issued by the Oklahoma Corporation Commission under the said Act of the Oklahoma Legislature, commonly referred to as the Oklahoma Oil Conservation Act. As a result of the proration of said pool under said act, plaintiff, at the time of the trial below, was limited in the production of oil from its said wells (all others were likewise limited) to about six per cent of the potential production thereof. At that time, the amount of the market outlet for oil in said pool, that is, the amount which could be produced therefrom without waste as defined in the statute, was 185,000 barrels per day (R. Vol. I, pt. 2, p. 344), although it had increased to 200,000 barrels per day for the last four days of June, 1931, which resulted in an allowable production of 10% of potentials computed according to said formula (Finding XIX, *ibid* 195). However, for convenience and in discussing the facts of the case, we

shall treat the amount of the market demand and the allowable production as being 185,000 barrels per day.

(b) The plaintiff also owns nine oil-producing wells in the so-called "Greater Seminole Area," about 65 miles east of the Oklahoma City pool. This area is described generally in Finding VI *(ibid* 183-184). This area covers a large territory and consists of eight or more distinct and separated oil pools. Therein, there are 2,441 producing oil wells having a potential production of 564,908 barrels per day, and at the time of the trial, the market demand in all of the pools in said area was for about 175,000 barrels per day. In some of the pools in said area, the ratio between the potentials and the market demand is 50 per cent and the allowable production is 50 per cent of the potential of each well therein; in others, the ratio is different (Finding VI). (Incidentally there are 60,000 other wells of quite small capacity in many pools scattered over the state capable of producing about 250,000 barrels per day; R. Vol. II, Pt. 2, p. 133.)

The chief complaint of the plaintiff is that it is not allowed to operate *its nine wells in the Oklahoma City pool* to whatever extent it may choose; and that the operation and enforcement of this law constitutionally deprives it of that right. Therefore, this controversy centers around the proration of the wells in said Oklahoma City pool.

If in the discussion of the several questions, we at times repeat facts elsewhere stated, or go too much into detail, we trust that extenuation may be found in our desire to bring to the attention of the court each pertinent fact and fully support our statement thereof.

Answer to Appellant's Brief in No. 485.

NATURE OF THE RIGHTS OF OWNERS OF LAND IN OKLAHOMA, AND LESSEES THEREOF, FOR OIL AND GAS MINING PURPOSES.

Following the decision of this court in *Ohio Oil Co.* v. *Indiana*, 177 U. S. 190, 44 L. ed. 729, the Supreme Court of Oklahoma has defined the right of an owner of land in that state, with respect to oil and gas, which may permeate the strata underlying the surface, substantially as follows:

> ***On account of their "vagrant and fugitive nature" constituting "a sort of subterranean ferae naturae," the owner of land has no absolute right or title to the oil or gas which may permeate the strata underlying the surface of the land, as in the case of coal or other solid minerals fixed in, and forming a part of, the soil itself. But with respect to such oil and gas, he has certain rights designated by some courts as a qualified ownership thereof, but which may be more accurately stated as the exclusive right, subject to legislative control against waste and the like, to erect structures on the surface of the land, and explore therefor by drilling wells through the underlying strata, and to take therefrom and reduce to possession, and thus acquire absolute title as personal property to such as may be found and obtained thereby.***
>
> —*Rich* v. *Doneghey*, 71 Okl. 204, 177 Pac. 86, 3 A. L. R. 352.

In the same decision, the Supreme Court of that state defined the right acquired by a lessee under an oil and gas lease, such as the appellant acquired in the lots and par-

cels of land described in the bill and set forth in the findings of the District Court (Findings of Fact III, R. Vol. I, Pt. 2, p. 179), which may be stated as follows:

> ***Under an oil and gas lease from the owner of land, the lessee acquires the right for the term of the lease, of operating for oil and gas on the land, which includes the right to explore therefor, and to extract therefrom and reduce to possession such as may be found. The lease is a grant of the exclusive right for the time specified, to take all the oil and gas that can be found by drilling wells on the particular tract, with the accompanying incidental right to occupy so much of the surface required to do those things necessary to the discovery of and for the enjoyment of the principal right to take oil or gas.***

The rule obtaining in Oklahoma is further stated by the state Supreme Court in that decision in substance as follows:

> ***A conveyance which in terms purports to grant all the oil and gas in place, by reason of the nature of those substances, vests no estate or title therein, but only the right to search for and reduce to possession such as may be found; and when reduced to possession, not merely discovered, title thereto and an estate therein as corporeal property will vest.***

In announcing the foregoing principles, the state Supreme Court reviewed and applied all of its previous decisions pertaining to the subject. On those points the decision has since been generally followed by that court and the United States courts in cases arising in that jurisdiction.

LEGISLATIVE POWER.

The production of oil from a common source of supply thereof is subject to regulation by a state under its police power.

To promote the general welfare, a state may by legislative enactment regulate the exercise of the correlative rights of land proprietors within a common source of supply of crude oil. No constitutional rights, state or federal, are invaded by such a regulation if it be reasonable and applies substantially alike to all similarly situated.

The decisions of this court leave no room for doubt as to the soundness of this statement.

—*Ohio Oil Co.* v. *Indiana*, 177 U. S. 190;
Lindsley v. *Natural Carbonic Gas Co.*, 220 U. S. 61;
Walls v. *Midland Carbon Co.*, 254 U. S. 300;
Bacon v. *Walker*, 204 U. S. 311;
Noble State Bank v. *Haskell*, 219 U. S. 104;
West v. *Kansas Natural Gas Co.*, 221 U. S. 229;
Bandini Petroleum Co. v. *Superior Court*, ... U. S. ..., No. 43, October, 1931, term.

Petitions for writs of certiorari were denied in two important cases involving regulations of this kind.

—*Oxford Oil Company* v. *Atlantic Oil & Producing Co.*, (C. C. A. 5) 22 Fed. (2d) 597, *certiorari* denied, 277 U. S. 585;

wherein the court sustained the validity and declared the reasonableness of a rule promulgated by the Railroad Commission of Texas with reference to the spacing and location

of oil wells on the ground, and sustained a special order of the said Commission limiting the number of wells to four upon a strip of ground in Texas more than 3000 feet long and about 45 feet in width, and denied the contention of the lessee that it was deprived of constitutional rights in not being allowed to drill and operate as many as ten wells on said strip of land.

—*Marrs* v. *City of Oxford,* (C. C. A. 8) 32 Fed. (2d) 138, *certiorari* denied, 280 U. S. 573,

sustained the constitutional validity of an ordinance of the City of Oxford, Kansas, requiring in substance and effect the unit operation of all the lots within any city block, an oil pool having encroached upon the city limits, by prohibiting the drilling of more than one well within the block for the drilling of which a permit was required to be obtained, and providing that all lot owners and their lessees on lots other than the one covered by a permit might ratably share in the production from the one well upon contributing their ratable proportionate parts of the cost of drilling and operating the well.

The Supreme Court of the State of Oklahoma, in *C. C. Julian Oil & Royalties Co.* v. *Capshaw,* 145 Okl. 237, 292 Pac. 841, followed the decision of this court in the *Ohio Oil Company,* the *Lindsley* and the *Walls* cases, and defined the correlative rights of the several owners of separate tracts of land in Oklahoma, overlying a common pool or source of supply of oil, with respect to oil and gas therein, and the power of the state to regulate such rights. Therein said court, sustaining the validity of the act herein in ques-

tion, as a valid exercise of the legislative police power, in the fourth syllabus prepared by the court, said:

> "The surface owners of land have the right to drill for and reduce to possession the oil and gas beneath; but this right is to all of the owners alik. nd when numerous surface owners seek to produce from a common pool it is within the police power of the state, in keeping with due process of law, to require the several surface owners to produce same under reasonable regulations to the end that some of said owners may not take from the common source more than their equitable share."

Said case involved some among the present series of orders of the Corporation Commission affecting the Oklahoma City field.

Under the law of Oklahoma, Sec. 803, C. O. S. 1921, a syllabus of the points of law decided in any case in the Supreme Court of the state shall be stated, in writing, and filed among the papers in the case, but shall be confined to points of law arising from the facts in the case, that have been determined by the court. The syllabus so prepared is the law as adopted by the court.

—*McDonald* v. *Stiles,* 7 Okl. 327.

LEGISLATIVE DISCRETION.

The legislature of Oklahoma possessed authority to determine and select the means to be adopted to accomplish conservation and the protection of the correlative rights of the landowners in the oil pools of the state.

Many times this court has announced the rule that the

choice of the means to achieve a purpose which it is competent for government to effect is a matter of legislative discretion, and where the choice made bears a reasonable relation to the purpose in view, the exercise of the discretion is not subject to judicial review. Whether it is wise or unwise, whether it is the best or the poorest, are not questions with which the courts are concerned in passing judgment upon the power to prescribe them or their enforcement according to the means selected.

—*Chi. B. & Q. R. Co.* v. *McGuire,* 219 U. S. 549, 569, 55 L. ed. 338, 339;

Block v. *Hirsh,* 256 U. S. 135, 65 L. ed. 865, 872;

Ohio Oil Co. v. *Indiana, supra;*

Walls v. *Midland Carbon Co., supra.*

Fairly debatable questions as to the reasonableness, wisdom and propriety of the legislative determination are not for the courts, but for the legislative body.

—*Standard Oil Co.* v. *Marysville,* 279 U. S. 582, 73 L. ed. 856;

Jacobson v. *Massachusetts,* 197 U. S. 11, 49 L. ed. 643.

The same principle governs in passing judgment upon the particular rules and regulations which, acting within the scope of its authority, the Corporation Commission has promulgated for the enforcement of the law.

THE CORRELATION OF THE SEVERAL PROVISIONS OF THE OKLAHOMA OIL PRORATION LAW AND THE CONDITIONS WHICH INVOKED THEIR ENACTMENT.

The validity of section 2 of the act (Sec. 7955, C. O. S. 1921), as we shall point out in the course of the argument, is not involved in this suit. The orders of the Corporation Commission complained of herein were not issued thereunder or based thereon. (Finding X, R. Vol. I, Pt. 2, p. 189; Finding XXVIII, *ibid* 207, 210.)

In the enactment of the statutes involved in this suit (quoted plaintiff's brief, pp. 2-6), it was for the Oklahoma Legislature to decide from its general information, and from facts specially brought to its attention, the nature of the evils actually present or threatening and to take such steps by legislation within its power as it deemed proper to remedy them. It is helpful to courts in interpreting the effect and scope of statutes, in order to determine their validity to know the conditions under which the legislature acted. *Stafford* v. *Wallace,* 258 U. S. 495, 513.

Waste incident to production in excess of transportation or marketing facilities or reasonable market demands.

Section 7954 (Sec. 1, Original Act) in general terms prohibits the production of crude oil or petroleum in the state, in such manner and under such conditions as to constitute waste. Section 7955 (Sec. 3, Original Act) defines waste to include that "incident to the production of crude oil or petroleum in excess of transportation or marketing facilities, or reasonable market demands." In other words,

the legislature declared the production of oil in excess of transportation or marketing facilities to be waste. It also declared production of oil in excess of reasonable market demands to be waste.

At the time of the enactment of these statutes, as now, the uses for crude oil or petroleum in their natural state were and are limited. It must be processed or refined. There are established refineries throughout the country. These furnish practically the whole market for crude oil. The principal refineries are generally remote from the chief sources of production. While there is some transportation of oil in tank cars by railway from the oil fields to the refineries, the usual and by far the more economical method of transportation is by pipe line systems (the average difference in cost throughout the country in 1914 was fifty cents per barrel in favor of the pipe line; R. Vol. II, Pt. 3, p. 252). In transportation by pipe line the oil is received directly from the tanks at the wells, and ultimately delivered by the pipe line into the tanks at the refineries. The three important stages in the process of securing the beneficial use of the products of crude oil, are, its production, its transportation by pipe line to the refineries, and its processing at the refineries. Nearly all refining companies own, or directly control through subsidiary or affiliated companies, the pipe lines extending from the refinery to the source of supply. Many of them are also themselves, or through subsidiary or affiliated companies, producers of oil. These are known as "integrated producers."

But as the petroleum industry was constituted in 1915, and still is *(e.g.,* the Seminole area, plft.'s Ex. 14, R. Vol. II, Pt. 1, pp. 6-9; the Oklahoma City pool, plft.'s Ex. 18, R. *ibid,* pp. 12-13), the great majority of well owners, operators or producers were "non-integrated," that is, performed the sole function of producing crude oil, and did not own or control pipe lines or other transportation or marketing facilities, or refineries for processing the oil and preparing its products for consumption. These non-integrated producers were and are dependent on the refiners, or middlemen, owning or affiliated with others owning the pipe line or transportation facilities, for a market for their production. Usually the purchasers were and are producers from the same common source of supply.

As long as the pipe line facilities are sufficient to transport the full production from a common source of supply, and the refineries to which the oil is sold and transported are able and willing to purchase all the production of the non-integrated producers in addition to taking that of their own or affiliated companies, the business proceeds smoothly without serious injury to the rights of any producer. But, when either the full production from a common source of supply exceeds the pipe line transportation or marketing facilities, or although such facilities are adequate, if the full production exceeds the market demands, that is, if the refineries are unable or unwilling to take the full production; then in the absence of regulation by the state, certain evils arise and injuries are suffered by all producers, but principally by the non-integrated ones.

When the Fifth Legislature of Oklahoma convened in January, 1915, the evil consequences of such production in excess of transportation or marketing facilities or reasonable market demands had been but recently demonstrated by the occurrences in the Cushing and Healdton fields, and like occurrences in the Glenn Pool of an earlier day had not been forgotten. The evil conditions attending such excessive production were developed in hearings before the Corporation Commission in 1914, when it was attempting to afford a remedy therefor under its then limited and doubtful powers, and also in hearings soon after the Act of February 11, 1915, was approved.

Some of the facts developed at these hearings were recited in orders made by the Commission during that period. These orders are in evidence here. See, Order 829 (R. Vol. II, Pt. 4, p. 432), Order No. 846 (R. Vol. II, Pt. 3, p. 247), Order 878 (R. Vol. II, Pt. 4, p. 437), Order 920 (R. Vol. II, Pt. 4, p. 440). We shall quote parts of these.

At the hearing before the District Court in January, 1931, on the application for a temporary injunction, a transcript of the testimony taken at the hearings before the Corporation Commission in October, 1930, was introduced in evidence. At the request of the court, each of the parties submitted an abstract of that portion of said evidence which pertained to the question of waste. By agreement, this abstract was introduced on the final hearing. Many of the witnesses testified to the conditions of waste attending the production in excess of market demands in times past, and the probability thereof at present (R. Vol. II, Pt. 4, pp. 316-363).

From these sources we learn, as recited by the Commission in 1914 in Order 846:

> "In times past when a crude oil pool was discovered in Oklahoma, some of the pipe lines on a very small tract in or near the center of a pool extracted an undue proportion of the oil from their own properties and refused to buy from other producers within the same pool." (R. Vol. II, Pt. 3, p. 253.)

Referring to the results of the mad rush in the Glenn Pool, to get as much oil and as quickly as possible, Mr. Blatchley, author of Technical Paper 45, published in 1913 by the Bureau of Mines (pp. 23-24), stated:

> "As one man confidentially put it, 'More waste oil had run down the creeks from the famous Glenn Pool than was ever produced in Illinois'."

In its Order 846 of September 22, 1914, the Commission said:

> "There are ten million barrels of oil now stored in the Cushing field, the deterioration of which will range from ten to twenty-five per cent, the first year. Hence there is from one to two and a half million barrels of oil destroyed by this process. Many barrels go down the creek and are destroyed in various ways." (R. Vol. II, Pt. 3, p. 262.)

In the course of the same order, the Commission said:

> "With the helplessness of the oil producer in materially curtailing the production and holding his oil in the ground until such times as the transportation facilities and market conditions will care for it, he is forced to store it at a cost of approximately thirty

cents per barrel, including loss the first six months by evaporation." (R. Vol. II, Pt. 3, p. 255.)

In its Order 920 of June 5, 1915, shortly after the law became effective, referring to conditions existing at Healdton prior thereto, the Commission stated that it had ascertained that at one time more than six hundred thousand barrels of oil had been placed in earthen storage, and that much of this earthen storage was carried off by the floods to the great injury of crops, vegetation and stock water supply (R. Vol. II, Pt. 4, p. 442).

It was further recited therein:

> "Within sixty days prior to the hearing, there had been from one hundred and fifty to two hundred thousand barrels of oil taken from the field under what is known as 'common carrier' runs to the Pierce-Fordyce Refinery at Fort Worth. The evidence further disclosed that certain properties had been producing oil greatly in excess of the pro rata amount based on the average daily consumption; that the 150,000 barrels of oil which had been run as 'common carrier' runs were produced by one property of comparatively small acreage."

The Commission further said, touching on "economic waste," included in the statutory definition:

> "It may be insisted that the wells in the Healdton field may be operated at their maximum capacity and the oil placed in steel storage. Such storage in the Healdton field with one year's insurance costs approximately 25 cents per barrel. The maximum market price for oil in that field is now 30 cents per barrel. Even though there was no waste of oil in steel tankage by

evaporation this practice would border on economic waste as between the producers. Should one producer or several producers force the other producers to install steel storage when the oil placed therein is worth but little more than the cost of storage and practically cause the producer to lose all of his rights in the proper production of oil from the common source of supply? We believe this would be economic waste." (R. Vol. II, Pt. 4, p. 454.)

It may be observed in this connection that at the time of the trial herein the price of oil was thirty-five cents per barrel, and cost of storing oil in modern tanks was twenty-five cents per barrel, besides the cost of insurance, and that in the most modern type of storage tank, the loss by volume the first year is one per cent, and that there is a small continuous deterioration in quality due to the loss of gasoline content. (Wiggins, R. Vol. I, Pt. 2, p. 272.)

The significant physical fact of the power of migration of oil and gas, and the well-known disposition of mankind to assert and exercise their "rights" to the fullest extent, especially if by so doing they can advance, if only temporarily, their own interests, and the corresponding disposition to defend any invasion of their "rights," are the principal contributing causes to the conditions that have always been brought about and always will be brought about, unless regulated by law, by the production of oil in excess either of transportation and marketing facilities, or in excess of reasonable market demands. *Nearly all men can recognize the abstract merit of the ethical concept of oil production, which is that each producer from an oil pool is entitled to enjoy a fair and equitable share of the recover-*

able oil and gas from the pool over which his land is located, but all men cannot be trusted to act on that concept when opposed to self-interest.

The physical facts of the power of involuntary transmission of oil and gas in the natural reservoir, has been recognized and stated by this court in *Ohio Oil Co.* v. *Indiana, supra,* and other decisions. That fact, as well as the characteristic of man alluded to, were known and recognized by the Oklahoma Legislature in dealing with the problem.

In its Order 846 of September 22, 1914, the Commission observed, among other things:

> "Crude oil * * * is found underneath the surface of the ground in pools or strata and the production therefrom is not uniform. For a period the production will decrease rapidly; suddenly a new pool of oil is found and the production in localities greatly exceeds the transportation facilities, while at the same time the total production through the country may not be greatly increased and in other sections of the country there may be a corresponding decrease. The producer of oil is practically helpless as to the number of wells he may drill or the amount of oil he may produce; oil either being in a common pool or flowing beneath the ground may be taken not only from the owner of the land upon which the well is located but may, through this opening, be extracted from other lands, hence the owners of adjoining properties must drill an equal number of wells along either side of the line separating the two properties, and if the wells are kept flowing on one property, the other must be kept flowing in order that each may extract from the ground their

reasonable pro rata of the oil." (R. Vol. II, Pt. 3, p. 248.)

The Commission further said:

> "Anything that demoralizes a whole industry to such an unnatural and unreasonable extent should, in some way, be controlled by public authority. If this oil could be conserved and used as demands may justify, the public could continue to buy gasoline and kerosene at a reasonable price. No individual or half dozen individual oil producers in the Cushing field can control the situation. They are carried along in a whirlpool of production as helpless as a child in mid-stream and cannot prevent the inevitable result. They cannot even protect their own property *by holding the oil until such times as market and transportation conditions will properly care for the same.*" (R. Vol. II, Pt. 3, p. 261.)

In a supplement to that order, the Commission finally said:

> "After two days' hearings of the conditions attending the production of oil and the situation generally in Oklahoma, the Commission has arrived at the conclusion that no substantial relief can be given by any power or authority without a reasonable limitation on production; that is, protecting one producer against the other." (R. Vol. II, Pt. 3, p. 245.)

The District Court summed up and recited the foregoing facts in Finding VII (R. Vol. I, Pt. 2, p. 185), which was concurred in by the dissenting judge as substantially correct (R. Vol. I, Pt. 2, p. 212).

So the legislature, in the light of these and perhaps other facts, defined waste to include "waste *incident* to the production of crude oil or petroleum in excess of trans-

portation or marketing facilities," and also "waste incident to the production of crude oil or petroleum in excess of * * * reasonable market demands." This clearly comprehends as well "economic waste" *(e.g.,* expense of steel storage and risk of loss by fire), and "surface waste" (loss by seepage, evaporation and washing away from earthen storage). To conserve the rights of all having the privilege to produce from a common source of supply and protect the collective owners, by securing a just distribution to arise from the enjoyment by them of their privilege to reduce to possession, it was provided in section 7957 (Sec. 4 of Original Act):

> "That whenever the full production from any common source of supply of crude oil or petroleum in this state can only be obtained under conditions constituting waste as herein defined" *(e.g.,* when in excess of either transportation or marketing facilities, or reasonable market demands) "then any person, firm or corporation, having the right to drill into and produce oil from any common source of supply, may take therefrom only such proportion of all crude oil and petroleum that may be produced therefrom without waste" *(e.g.,* either the amount of the transportation and marketing facilities, or reasonable market demands, as the case may be) "as the production of the well or wells of any such person, firm or corporation, bears to the total production of such common source of supply."

There is also in this section an additional provision conferring jurisdiction on the Corporation Commission to make regulations to the end of preventing unfair or inequitable taking, and unjust discrimination between common sources of supply.

It appears rather clearly that the statute has accomplished its purpose in this regard. Under it, production was first regulated in the Healdton field in 1915. In Order 937, September 1, 1915, the Commission said:

> "On June 5, 1915, the Commission issued an order under said act (Order No. 920, Cause No. 2287) and immediately put the same into effect. At this time a conservation agent appointed by the Commission is in the Healdton field and the order is working admirably. Whereas, before the passage of the act some producers obtained a market and others had none—and found pipe line facilities available for themselves but not for others—and were enabled to draw heavily from the common sources of supply, now actual production is restrained or held back to that part of the potential production necessary for the daily market demands, in which every operator now participates according to his pro rata." (Eighth and Ninth Annual Reports of Corporation Commission of the State of Oklahoma, pp. 287, 315.)

The above referred to abstract of the testimony taken by the Commission in October, 1930, shows that notwithstanding the potential production in excess of market demand in each, the Seminole and the Oklahoma City field in 1930, was far greater than that in either the Cushing or the Healdton field in 1914-1915 prior to the enactment of the law, yet, under the operation of this law, there has been no recurrence of the deplorable conditions that had preceded its enactment and called it into existence.

Excessive production of oil is accompanied by the waste of gas.

The co-existence of oil and gas in the same reservoir is a matter of common knowledge. The two are necessarily produced together. For years, this gas, called casinghead gas, had no known commercial value. In those years, practically all of this gas was allowed to dissipate in the air and go to waste. Later, this gas was found to have a commercial value, and in producing the maximum amount of the more commercially valuable oil of which the wells were capable, large quantities of such gas were produced in excess of that which could be utilized and the surplus went to waste.

Mr. Blatchley, author of *Technical Paper 45*, written in January, 1913, and published in that year by the Bureau of Mines, mentions several instances of allowing tremendous quantities of gas produced by oil wells in several of the pools in Oklahoma to be discharged in the air. For example, he states (page 25) that in the Copan field, the original flow of gas is said to have been 3,000,000 cubic feet daily, that water entered the oil strata and that portions of the field were drowned at the time he wrote. He states (page 34) that the Glenpool field, discovered in 1906, "is one of the greatest oil and gas pools that has ever been developed" and that "a large number of the wells produce large volumes of gas both from above and in the oil sand." He says that billions, perhaps as high as 50,000,000,000 cubic feet of gas was wasted; that many wells with initial volumes of from 10,000,000 to 30,000,000 cubic feet flowed wide open

for periods of from 1 to 8 weeks. On subsequent pages, he described the waste of gas in a number of other pools in the state.

Casinghead gas has a gasoline content, a very volatile form of gasoline. It possesses a commercial value for use in blending with gasoline manufactured from crude oil. Several years ago, the business of extracting the gasoline from this gas was begun and it has grown until now it alone is a very substantial industry. But, because of the comparatively short period, often not exceeding a year, of flush production in new oil pools, plants capable of manufacturing the full amount of such casinghead gas available in such oil pools during their flush production period are not, for obvious economic reasons, constructed, but plants sufficient only to utilize the amount produced when the pool has passed its flush stage. Thus, it appears that one of the beneficial results, to those having the privilege of producing from a common source of supply of oil, of limiting the production of oil therefrom during the flush stage of the pool, is to enable the producers to secure the value of the utilization of great quantities of casinghead gas for gasoline manufacture that would otherwise necessarily be wasted.

This is demonstrated by the testimony of Mr. D. B. Dow, a petroleum engineer. He testified (R. Vol. I, Pt. 2, p. 363) to the capacity of the casinghead gasoline plants in the Oklahoma City field, the daily production of casinghead gas being in said field at the time of the trial under the then existing proration orders, and the value thereof,

and the ability of the plants to handle the then existing peak production of gas from all the wells in the field, which thus secured to every operator an opportunity to realize the value of the casinghead gas produced by him along with his proportionate share of the oil. Mr. Dow also stated the enormous quantity of gas and its gasoline content that would be produced and necessarily wasted during the first year after the wells were opened up if produced to maximum capacity. According to his calculation, the value of the gasoline alone that would be wasted, at the then prevailing low prices, was $1,848,750.00. And if the value of the residue gas be included, the amount would be $29,400,000.00.

The District Court found that the evidence adduced at the trial established that the curtailment plan adopted by the Commission in the basic order of the existing series (No. 5369, dated October 28, 1930) will tend to conserve natural gas as stated by the Commission in the order. (Finding of Fact XXI, R. Vol. I, Pt. 2, p. 197.)

Underground Waste.

There is another type of waste that may occur as incident to the full production from a common source of supply, which is denominated in the statute as "underground waste." Underground waste means oil wasted underground, that is, oil left in the natural reservoir unrecovered when the wells can no longer be properly operated and are finally abandoned, but which could have been recovered by proper operations. Necessarily oil so left that might have been recovered results in loss and injury to those having the privilege to produce from the reservoir.

It is a matter of common knowledge that not all of the oil in any formation is recoverable. We are told that for many years in many fields not exceeding 20% of the reservoir content was recovered. (*People v. Associated Oil Co. of Calif.*, 294 Pac. 717-724.)

In Bulletin 148, Petroleum Technology 37, entitled "Methods for Increasing Recovery from Oil Fields," by J. D. Lewis, published by the Bureau of Mines in 1917, the author, under a subheading entitled "Proportion of Oil Left Underground" (page 25) at page 30, states:

> "The total oil marketed from Oklahoma up to 1915 has been about 462,000,000 barrels, to which 38,875 wells have contributed. The marketed production in 1914 was 73,631,724 barrels from 27,794 wells, and the future production can be reasonably estimated not to exceed 300,000,000 barrels, a total of 762,000,000 barrels. From a record of over 6,000 wells on the lands of restricted Indians it is found that there is on the average one well to each 5.7 acres, at which figure the total producing acreage in Oklahoma is not over 225,000 acres, *and the production per acre will approximate 3,400 barrels, which would not saturate 3 feet of sand of the estimated porosity, although the average thickness of the oil sands in Oklahoma is many times greater.*"

The petroleum industry has devoted untiring efforts and millions of dollars to the problem of increasing the percentage of recovery, and thus decrease underground waste. Agencies of the government have for years devoted their energies to the problem. It has been learned that the ultimate recovery of oil can be increased by the improved

methods of drilling, casing and equipping wells so as to prevent the escape of gas energy, hereafter referred to, into other formations and intrusion of water into the reservoir from other sources. (See, also, Technical Paper 130, Petroleum Technology 30, entitled "Underground Wastes in Oil and Gas Fields and Methods of Prevention," by McMurray and Lewis, Bureau of Mines, 1916.) Under authority conferred by law, the Corporation Commission of Oklahoma made rules and regulations governing those matters by its Order 1299 entered July 16, 1917, and which have been amended and supplemented from time to time since.

As early as 1913 it was learned that, in addition to the commercial value of casinghead gas, that is, gas produced with the oil, in and of itself as a product of an oil well, *such gas had an even greater value in its function in the recovery of oil from the ground.*

Since the early days of the oil industry, it has been known that there is an expulsive force in every newly opened pool, which for a while drives the oil and gas out of the reservoir with great rapidity. In the early days, the nature of this force was not appreciated. It was called "rock pressure." It was known to exist and in many instances it was observed that it quickly disappeared. Producers hastened to fully utilize this pressure while it lasted. It seems to have been thought that the more expeditious its utilization, the greater the ultimate recovery of oil. But, at least as early as 1913, scientists learned more of the nature of this force, and that there were better methods

of its utilization in the recovery of the maximum amount of oil than its free and unrestricted use and consequent rapid exhaustion.

Petroleum engineers now refer to this force as "reservoir energy."

"Reservoir energy" is a natural force or power which exists in the reservoir where the oil and its accompanying gas have accumulated. It is sometimes referred to as "gas energy." Its existence is due to a combination of elements and conditions in the reservoir where the oil and gas, far below the surface, are held under high pressure.

An oil pool, or a common source of supply of crude oil, the thing referred to in section 4 of the act here in question, consists of an accumulation of oil in the pores of folds in strata of sedimentary rocks. It is covered by an impervious formation through which neither the oil nor its accompanying gas can rise to higher levels until penetrated by the drilling of wells. Beneath the oil and gas and/or around the lower outer edges of the pool, water, usually salt-water, has accumulated in like pores of the rock. The stratum containing the water often extends, unbroken, for long distances away from the pool. It produces a hydrostatic head pressure on the oil and gas. L. G. Huntley says that the accumulation of oil is in a "practically sealed reservoir." (Bureau of Mines, Technical Paper 51, Possible Causes of the Decline of Oil Wells, 1913, by L. G. Huntley.)

In addition to the gas in solution with the oil, sometimes free gas has accumulated at high points in the reservoir. (Arnold, R. Vol. I, Pt. 2, pp. 320-329; McWilliams,

ibid, p. 341.) The gas, when it is not in solution with the oil, being lighter than the oil, is in the top of the structure; the oil, being lighter than the water, is positioned above the water and then the water is in the base of the reservoir or around the lower outer edges thereof. (McWilliams, R. Vol. I, Pt. 2, p. 340; Bureau of Mines, Technical Paper 130, 1916, Underground Wastes in Oil and Gas Fields and Methods of Prevention, by McMurray and Lewis, p. 25.)

The amount of the pressure varies with variations in the depths beneath the surface at which the accumulation has occurred. It is said that the increase is at the rate of about thirty-five pounds per square inch for each one hundred feet of increase in depth. At Oklahoma City, where the reservoirs containing the oil and gas have been found at about 6500 feet below the surface, the pressure was originally about 2400 pounds to the square inch (Clifton, R. Vol. I, Pt. 2, pp. 266-267).

Pressure compresses gas. By reason of this pressure both the gas in solution and the free gas are highly compressed and seek an opportunity to escape. Gas in solution with oil very greatly decreases the viscosity of the oil and increases its ability and tendency to move through the small pores of the rock containing it. (McWilliams, R. Vol. I, Pt. 2, pp. 340, 343, 348.) As the gas and oil are released through wells, the water forces its way in. Gas moves more freely through the sand pores than the oil or the water, and the water moves more freely than the oil (McWilliams, *ibid).*

The result is that if there is an inordinate release of pressure by an excessive production from a well, the gas

and oil about the well rush out too fast for surrounding oil to move in, and the water intrudes into the spaces of least pressure, the partially vacated pores, and it often comes to the well bore in advance of the surrounding oil, thus causing what is termed "coning." Also "channeling" occurs; and from coning and channeling, oil is sealed off and becomes unrecoverable; whereas, if the flow of the well is properly retarded, the water will retain its position beneath or around the accumulated oil, and cause the oil to flow ahead and upwards so that the percentage of its ultimate recovery is greatly increased. Combination of gas carriage and water drive is obtainable only by means of a retarded operation of the wells in the field during the natural flow period. These facts were developed in the trial, see testimony of J. R. McWilliams (R. Vol. I, Pt. 2, p. 340) and E. R. Guidinger (R. Vol. I, Pt. 2, p. 394).

Mr. McWilliams testified " • • • if you will take your oil out and gas sufficiently slow so your water encroaches symmetrically then you will materially increase your ultimate recovery" *(ibid* 341), also, "in order to accomplish the greatest ultimate recovery, each well should be operated at approximately the same percentage of its maximum capacity" *(ibid* 341).

Mr. Guidinger, referring to the matter of securing the greatest ultimate recovery in the Oklahoma City field by the proper utilization of gas energy, said, "I think the best method to operate the wells in this field is to have the wells produce under a restricted rate of flow under the same percentage of their potential capacity." (R. *ibid* 351-352.)

The effect of the waste of gas produced by oil wells in Oklahoma, such as is described by Mr. Blatchley, *supra*, was explained by Mr. Huntley, when, in his paper (Technical Paper No. 51, 1913) dealing with the subject of the efficient utilization of what is now called "reservoir energy," at page 7 he said:

> "The practice of allowing the free escape of vapors instead of endeavoring to make each cubic foot of gas in expanding perform its quota of work in the expulsion of liquid petroleum, is a direct cause of the decline of flowing wells. It is almost as direct a factor in the decline of pumping wells as the intrastrata gas pressure is the means of keeping up the continuous movement of the fluid toward the well when the well is pumped.
>
> "As another indirect effect, may be mentioned the flooding of oil pools by water, owing to the injudicious rapidity with which the gas is drained from the pool. The rapid exhaustion of the gas in a certain part of the field may remove the only influence retarding the encroachment of water, which may, by a flanking movement, cut off a large section of the producing area. Or water may exist in the lower part of the oil sand, being held in check only by the rock pressure of the gas. If each cubic foot of gas were retained to perform its work of expelling petroleum, the pressure would help to retard the water for a considerable period, or until the maximum amount of oil had been recovered."

It therefore appears that full production from a common source of supply may cause underground waste, as well as waste incident to the production of oil in excess of transportation and marketing facilities or reasonable market demands.

It may very well be that a condition would exist where the transportation and marketing facilities were adequate and the market demands sufficient to absorb the full production of a pool, yet, to permit such full production would result in otherwise recoverable oil being left in the ground and thus result in underground waste, and that in order to protect the rights of all the collective owners against such waste by any of them, the production should be limited within the limits that would secure a full utilization of the reservoir energy and the production should be apportioned so that each having the privilege to produce would secure his just proportion of the reservoir energy. For example, if there were a demand for the full production of the Oklahoma City pool most serious underground waste would result if it were supplied. (Arnold, R. Vol. I, Pt. 2, p. 324; McWilliams, *ibid*, p. 343; Guidinger, *ibid* 352.)

The District Court found that the evidence established that the curtailment of production in October, 1930, by Order 5369, under the authority of this act, would, as stated in the order "tend to conserve * * * gas pressure." (Finding of Fact XXI, R. Vol. I, Pt. 2, p. 197.) In their opinion, Circuit Judges COTTERAL and PHILLIPS, said:

> "Furthermore, it is established by the evidence that to permit oil wells to flow at their maximum flush production results in the use of an excessive amount of gas pressure, an uneconomical and wasteful use of gas energy in lifting the oil, and a tremendous loss in ultimate recovery." (R. Vol. I, Pt. 2, pp. 224, 225.)

Summary of the Purpose of the Statute.

The facts and circumstances hereinabove recited bring the statute in question within the test of reasonableness laid down by this court and establish that it is not only reasonable but also that it is doubtless one of the best systems which could be adopted to attain the ends in view.

The evident purpose of the legislature in the enactment of said law was to secure to all persons having the right to produce from a common source of supply, a just distribution among them to arise from the enjoyment by them of their privilege to reduce to possession. *(Ohio Oil Co.* v. *Indiana, supra.)*

It is evident that without a regulation of the type prescribed by this law, an individual owner is powerless to secure such distribution whenever the full production to be had from a common source of supply *(a)* exceeds the transportation or marketing facilities; or *(b)* exceeds the reasonable market demands for oil therein, or *(c)* exceeds the proper amount for the efficient utilization of the reservoir energy.

THE PARTICULAR REGULATIONS PRESCRIBED BY THE ACT IN QUESTION BEAR A REASONABLE RELATION TO THE PREVENTION OF WASTE AND THE PROTECTION OF THE CORRELATIVE RIGHTS OF THE LAND PROPRIETORS IN A COMMON SOURCE OF SUPPLY OF OIL.

The Test of Reasonableness.

A police regulation which bears a reasonable relation to an object within the governmental authority is valid.

The recognized test of reasonableness was laid down by this court in *Chicago, B. & Q. R. Co.* v. *Illinois*, 200 U. S. 561, 592, 50 L. ed. 596, 609, when it said:

> "And the validity of the police regulations, whether established directly by the state or by some public body acting under its sanction must depend on the circumstances of each case and the character of the regulation, whether arbitrary or reasonable, and whether really designed to accomplish a legitimate public policy."

This test was applied by this court in passing upon the validity of the Indiana statute involved in the case of *Ohio Oil Company* v. *Indiana, supra;* the sheep-grazing statute of Idaho in *Bacon* v. *Walker, supra;* the New York mineral water statute in the case of *Lindsley* v. *Natural Carbonic Gas Company, supra.*

The requirement for proportional production, a percentage of the potential capacity of each well in a pool, is reasonable.

Section 4 of the Oklahoma statute is patterned on what this court said could be done in the case of *Ohio Oil Company* v. *Indiana.*

By this statute a "just distribution" to arise from an exercise of the right to reduce to possession is sought to be attained.

In the *Ohio Oil Company* case, it was said:

> "Hence it is that the legislative power, from the peculiar nature of the right and the objects upon which it is to be exerted, can be manifested for the purpose

of protecting all the collective owners, by securing a just distribution, to arise from the enjoyment, by them, of their privilege to reduce to possession, and reach the like end by preventing waste."

In the *Lindsley* case, it was said of the New York statute:

> "*Thus these pumping operations generally result in an unreasonable and wasteful depletion of the common supply and in a corresponding injury to others equally entitled to resort to it.* It is to correct this evil that the statute was adopted, and the remedy which it applies is an enforced discontinuance of the excessive and wasteful features of the pumping. It does not take from any surface owner the right to tap the underlying rock and to draw from the common supply, but, consistently with the continued existence of that right, *so regulates its exercise as reasonably to conserve the interests of all who possess it.* That the state, consistently with due process of law, may do this, is a necessary conclusion from the decision in the case cited. But were the question an open one, we still should solve it in the same way." (Italics ours.)

In the *West* case, speaking of the decision in the *Ohio Oil Company* case, it was said:

> "The statute of Indiana was directed against waste of the gas, and was sustained because it protected the use of all the surface owners against the waste of any. The statute was one of true conservation, securing the rights of property, not impairing them. *Its purpose was to secure to the common owners of the gas a proportionate acquisition of it—a reduction to possession and property—not to take away any right of use or disposition after it had thus become property.* It was

sustained because such was its purpose; * * * " (Italics ours.)

In the *Walls* case, speaking of the *Ohio Oil Company* case, it was said:

> *"It was decided, however, that before that event occurs, indeed, in prevention of it, the state may interpose its power to prevent a waste or disproportionate use of either oil or gas by a particular owner in order to conserve the equal right of other owners and advance the public interest."* (Italics ours.)

In *Euclid* v. *Ambler Realty Co.*, 272 U. S. 365, 388-389, 71 L. ed. 303, 311, this court said:

> "The inclusion of a reasonable margin to insure effective enforcement will not put upon a law, otherwise valid, the stamp of invalidity."

In *Bacon* v. *Walker*, 204 U. S. 311, 317, speaking of the 2-mile limit in the Idaho sheep-grazing statute, this court said that,

> "The selection of some limit is a legislative power, and it is only against the abuse of the power, if at all, that the courts may interpose."

Neither the Indiana nor the New York statute required ratable taking; but the Oklahoma Statute does require it, and thus it does that which this court has declared a legislature may do. It precludes a disproportionate part from being attributed to one or more of the surface owners to the detriment of others.

Section 4 of the Oklahoma Statute prescribes a standard of conduct or criterion to guide producers from a com-

mon source of supply of crude oil in all cases where the full potential production of all the wells in the pool can be obtained only under conditions constituting waste as defined in the act.

The 1914 orders of the Corporation Commission (Order 829, July 1, 1914, R. Vol. II, Pt. 4, p. 432; Order 846, September 22, 1914, R. *ibid*, Pt. 2, pp. 247, 257), disclose that the Commission, prior to the enactment of this law by the legislature, had carefully considered the *Ohio Oil Company* opinion, and thus the Commission, with this case as its guide, pointed the way to the relief which could be granted. It is logical to conclude that the legislature also, and with equal earnestness, considered said case and attempted to enact a law which would grant the very relief which this court had already held could be granted.

Four months after this law was enacted, the Commission, in connection with the promulgation of regulations for prorating the Healdton pool, considered the insistence by some that the law was unconstitutional, and it quoted extensively from the *Ohio Oil Company* opinion (Order 920, June 5, 1915, R. Vol. II, Pt. 4, pp. 440, 446-452) and from the *Lindsley* case and the *West* case (p. 451) and held:

> "Sections 3 and 4 of the act come clearly within the language of Chief Justice WHITE in that the object is to protect the common owners who have a right to take oil from the common source of supply, that those who have pipe lines or markets may not totally destroy the rights of others who may not be so fortunately situated."

To provide that each producer may produce from his wells only that percentage of the potential capacity thereof, whenever the full production of all the wells in the pool cannot be had without waste, which corresponds to the ratio between the total potential of all wells in the pool and the amount which can be produced from the pool without waste, places all producers upon the same basis.

A limitation of production from a common source of supply to the amount of the reasonable market demand for oil therefrom, accompanied by a requirement for proportional oil production by all proprietors therein, is reasonable.

In the *Ohio Oil Company* case the court graphically described with prophetic vision the *possibility* of injury, should one producer operate his wells excessively. In the *Lindsley* case and in quotations made from the Supreme Court of Idaho in the case of *Bacon* v. *Walker,* the actual occurrence of the injuries before the law was passed were mentioned or described. In the *Ohio Oil Company* case this court said:

> "No one owner of the surface of the earth, within the area beneath which the gas and oil move can exercise his right to extract from the common reservoir, in which the supply is held, without, to an extent, diminishing the source of supply as to which all other owners of the surface must exercise their rights. The waste by one owner, caused by a reckless enjoyment of his right of striking the reservoir, at once, therefore, operates upon the other surface owners."

The court placed emphasis upon the *use* by one proprietor of his *power* to seek to convert a part of the common

fund to actual possession, and said that such use "*may* result in an undue proportion being attributed to one of the possessors of the right to the detriment of the others, or by waste by one or more to the annihilation of the rights of the remainder." It was held that because of the possibility of the exercise of such power, the legislature had authority to enact laws for protecting all of the collective owners by securing a just distribution to arise from the enjoyment by them of their privilege to reduce to possession.

The conditions existing in 1914 and 1915 demonstrate the reasonableness and necessity of this limitation.

We have seen, from our recitation of the conditions which led to the passage of this law, that in the oil fields in Oklahoma, prior to the enactment of the law in question, *the very things came to pass* which this court in the opinion by Chief Justice WHITE said were possible of occurrence.

The history of the times shows not only the reasonableness of, but also a necessity for, the limitation of the total production of a pool to the amount of the transportation and marketing facilities therein or the reasonable market demand in order to afford a basis for ratable production.

It appears that it was the consensus of opinion among those interested in accomplishing correlative right protection that there was but one effective remedy, and that it was to limit production to the amount of the reasonable market demands or transportation and storage facilities.

We have seen that prior to the enactment of this measure the correlative rights of some of the surface owners

in certain oil pools in Oklahoma were being invaded, seriously injured, and in some cases, practically wholly destroyed by excessive withdrawals by certain producers, like the plaintiff here, specially equipped to handle their own production. Also, these and others were wasting large quantities of gas and gas energy, thus causing underground waste. The conduct of these producers was the direct cause of untold surface waste of oil, as well as underground waste. The chief offenders were the integrated producers. These made excessive drafts on the common sources of supply of oil, transporting their production through their own pipe lines to their own steel storage tanks for use in their own refineries. (See, also, Order 920, June 5, 1915, R. Vol. II, Pt. 4, pp. 449-450.)

The non-integrated producers, for their protection, in many cases constructed earthen dams across draws and creeks or dug large pits on the surface and operated their wells and stored their production in the earthen tanks thus constructed. Oil so stored, being exposed to the atmosphere, greatly deteriorated in quality because its more volatile constituent elements evaporated into the air; large percentages of it were absorbed into the pores of the soil and when rains came considerable amounts were washed down the streams. That which they had left was of little value. Their estates were being destroyed. Some of the non-integrated producers stored some oil in steel storage, but that type of storage was quite expensive, and, additionally, there was a limit, because of many practical considerations, to the amount which could be so stored.

The conditions which have and do obtain in the Oklahoma City field demonstrate the reasonableness, and, in fact, necessity that production be limited to market demand and that ratable taking be required.

The Oklahoma City pool was discovered in December, 1928. The discovery well is located about two and one-half miles north of the present southern edge of the field. (See map, plaintiff's Exhibit 7, R. Vol. II, part 1, p. 2A.) Said well was drilled to the extreme depth of 6550 feet and there it encountered paying oil production in the Arbuckle lime (Clifton, R. Vol. I, part 2, pp. 253-254).

Subsequent drilling in the pool disclosed that the Arbuckle lime formation covered a considerable area (see map, plaintiff's Exhibit 7, cited above). Within nine months the potentials of the then drilled wells so far exceeded the then existing market demand for oil produced and the storage facilities in the pool that it was necessary that the operators prorate their production in the manner provided in this law. (Collins, R. Vol. I, part 2, pp. 285-286.)

In October, 1929, the Corporation Commission issued its first order concerning proration in said field. (Finding IX, R. Vol. I, part 2, p. 189.).

The field continued to expand and other oil-containing formations were found (Clifton, R. Vol. I, Pt. 2, pp. 253-256), the last and most prolific of which is the Wilcox sand, all about the same level, approximately 6500 feet below the surface. The field extended several miles to the north and west into platted additions to the City of Oklahoma City wherein there were many owners of quite small tracts of

land, and finally it encroached upon the corporate limits thereof. (See said map, plaintiff's Exhibit 7.) Development is still in progress. The town-lot area of the field produces mainly from the prolific Wilcox sand.

The plaintiff entered said field in 1930 after it was placed under proration and while it was in a state of intensive development. Plaintiff took scattered leases all located in the town-lot portion of the field. They cover relatively small tracts of land (Finding III, R. Vol. I, part 2, pp. 179-180), and are surrounded by small leases owned by others. Plaintiff's first production therein was had in September, 1930 (Finding IV, *ibid,* pp. 181-182).

By June, 1931, there were fifty-three separate individual producers of oil in said field (Finding VI, R. Vol. I, part 2, p. 184) owning 339 producing leasehold estates therein. (This latter number is the total of the names of the leases shown in the column headed "Well" on plaintiff's Exhibit 24, R. Vol. II, part 1, pp. 37-68.) Plaintiff's Exhibit 7, referred to above, shows, though dimly in many instances, the locations and boundaries of the 339 separately-owned producing leases.

By June 15, 1931, 746 wells had been drilled (Finding VI, R. Vol. I, part 2, p. 184), and the pool had long since become the largest pool ever discovered in Oklahoma. On said date its wells had a potential capacity of 8,963,679 barrels per day, or, when divided by three, 2,987,993 barrels (Finding VI).

Many of the wells are capable of producing in excess of 50,000 barrels per well per day (see plaintiff's Exhibit

24, R. Vol. II, part 1, pp. 37-68, and particularly pp. 37, 39, 40, 44, 56, 57, 58, 59, 64, 65, 66 and 67 where the potentials of the wells as at June 1, 1931, *are listed* under the column entitled "Potent").

There is a very large amount of gas in solution with the oil in each of the producing horizons, and in some places free gas lies above the oil-saturated portions of the formation. Because of the great depth of the formations, the reservoir pressures were originally 2400 pounds to the square inch. The gas is thus very highly compressed and moves quickly toward any point of reduced pressure. Water lies beneath and around the oil deposits, resulting in a heavy hydrostatic pressure on the oil and gas. There are wells which on wide-open flow produce millions of cubic feet of gas to the barrel of oil, while others have been so completed or are so located on the structures that their gas-oil ratios are low, such as 500 cubic feet of gas to the barrel of oil. (Stalcup, R. Vol. I, Pt. 2, pp. 276-278; Dow, R. *ibid*, p. 262.) Water has appeared in wells in some parts of the field. (McWilliams, R. *ibid* 348.)

There are but few purchasers of oil in said field. (See Finding VI, R. Vol. I, Pt. 2, pp. 184-185.) During the period of one year prior to the hearing below, from July, 1930, to July, 1931, the market demand for oil in the pool ranged from 85,000 to 200,000 barrels per day, the latter amount having been reached for the first time during the last three days of June and the first day of July, 1931 (R. Vol. II, Pt. 2, pp. 90, 110, 129, 168, 209 and 215; Vol. I, Pt. 2, p. 344). Whereas, the potentials of the field, on the ba-

sis of the 4-hour gauge of each well multiplied by six to extend it to a 24-hour basis, increased from 600,000 barrels per day in June, 1930 (R. Vol. II, Pt. 2, p. 90), to 2,800,000 barrels in October, 1930, (R. *ibid* 129), to 5,388,298 barrels in January, 1931 (R. *ibid* 168), and to 7,718,244 barrels the last of June, 1931 (R. Vol. I, Pt. 2, p. 304). The orders of the Commission, from time to time, limited the production from each well to that percentage of its potential capacity which corresponded to the then ratio between the potential of the pool as a whole and the amount of the market demand from the pool. In its Order 5437, February 10, 1931, the Commission adopted a rule to divide by three the potentials of the wells in said field as shown by the 4-hour open-flow of the wells times six (R. Vol. II, Pt. 2, pp. 204-205), the reason for which we shall explain in our discussion of gauges and potentials. The record discloses that many new wells of unexpected large potentials were brought in in July, August and September, 1930 (R. Vol. II, Pt. 2, p. 119). Thereafter, drilling continued, and yet at the time of the trial the extent of the area of the pool had not been determined.

The storage facilities in the field consist of stock tanks for each separate lease, each capable of holding a few hundred barrels, and a comparatively few large storage tanks. At each well there is either a "flow-tank" or a "separator" which receives the oil and gas direct from the wells and in which the gas is separated from the oil, and from which the oil flows to the stock-tanks, where the amount is gauged. However, neither flow-tanks, separators nor stock-tanks are to be counted in estimating the storage facilities which

would be required to take care of production in event the wells were allowed to produce in appreciable excess of the amount of the market demand for oil from the field, because such equipment is essential to handle the production even under the present system of proration.

The only large amount of storage capacity which is definitely shown by the record to exist in the vicinity of the Oklahoma City field consists of twenty-eight 80,000-barrel tanks erected by the Sinclair Oil & Gas Company (Wiggins, R. Vol. I, part 2, p. 273). These have a total capacity of 2,240,000 barrels, but the Sinclair Company owns in said field fifty-four wells with a total potential capacity of 398,548 barrels per day, before being divided by three (R. Vol. II, part 1, p. 13). The plaintiff has an 80,000-barrel tank in the field. On September 25, 1930, 1,333,000 barrels were in storage on leases in the field (R. Vol. II, Pt. 2, p. 119), and on November 3, 1930, there were 3,169,796 in lease storage (R. *ibid* 148). This was no doubt principally in stock-tanks. It was oil which the pipe lines could not take (R. *ibid* 148).

To provide for any substantial amount of production above the amount of the market demand for oil from the pool, if the excess is to be saved from waste on the surface, steel storage tanks would have to be erected. The best steel storage costs 25 cents per barrel of oil stored therein (R. Vol. I, Pt. 2, pp. 273-274). Modern steel storage tanks are usually capable of holding either 55,000 barrels or 80,000 barrels each. Tank farms cannot be located in the heart of a field because the tanks must be positioned considerable

distances apart, usually 400 feet from shell to shell, and each must be surrounded with an earthen dike so that if any one of them is fired by lightning and its oil-content burns, none of the o t h e r s may be greatly endangered. (Bureau of Mines, Bulletin 155, Tech. Pap. 41, p. 3.)

In May, 1931, the fifty-three producers in the Oklahoma City field were classified as follows:

(a) Thirty-six producers having no pipe lines or refineries and who were dependent upon the pipe lines of others for an outlet for their oil. These had in the aggregate 596 wells, with a potential capacity of 7,192,609 barrels per day;

(b) Nine companies, owning ninety-six wells with a potential capacity of 737,739 barrels per day, who owned their own pipe lines and refineries; and,

(c) Eight companies with fifty-four wells having a potential capacity of 133,629 barrels per day, who owned pipe lines and refineries, but whose wells were so located as that they had to depend to a certain extent upon other lines to handle their production (R. Vol. II, part 1, pp. 12-14; Collins, Vol. I, part 2, p. 295).*

Outside conditions have a material bearing on the demand for oil in this field and the practicability of storing production therein. We shall state some of these.

The great Seminole pool was discovered in 1925, at the very cross roads of the major trunk pipe lines running north and south across Oklahoma (Collins, R. Vol. I, Pt. 2, 296-297), two or three years before the discovery of the Oklahoma City pool. It lies about 65 miles east and somewhat

* 77% of the producers in the Greater Seminole area are non-integrated (Finding VI, R. I, Pt. 2, p. 183).

south of the Oklahoma City pool. More than one year before the discovery of the Oklahoma City pool, and on August 1, 1927, the then discovered pools in the Seminole area were placed under proration by orders of the Corporation Commission (Finding IX, R. Vol. I, part 2, p. 189). Their potentials greatly exceeded the market demands for oil and the storage and transportation facilities therein, although there was then no pool at Oklahoma City to interfere with their market outlets.

Before the Seminole pool was discovered there were already a large number of other producing areas in the state. The Commission's Order 5189, dated June 30, 1930, states that there were in the state at that date 60,000 older and smaller wells producing an average of 4.18 barrels per well per day (R. Vol. II, part 2, pp. 91-92). These, called stripper wells, had their long-established market outlets.

Exploration in the Greater Seminole area had opened up other new pools therein before Oklahoma City came on, and at the time of the trial below, the last days of June, 1931, there were eight or more large pools in the Greater Seminole area with 2441 wells; as each one of them was brought in, it was placed under proration by orders of the Commission (Finding VI, R. Vol. I, part 2, p. 183).

In December, 1928, there were also many large oil pools in other oil-producing states and particularly in Texas and California, not to mention the old settled pools in those and many other states. The record does not show the conditions in 1928, but in October, 1930, the Commission found that the available potential supply of oil in the

various pools in the United States amounted to about 10,000,000 barrels per day, whereas, at that time, the total demand for oil was for but 2,800,000 barrels per day, between one-third and one-fourth of the potentials; and already tremendous quantities of oil, 685,000,000 barrels, had been placed in above-ground storage (R. Vol. II, part 2, p. 126). The witness Wiggins testified that over 500,000,000 barrels are in storage in various parts of the United States (R. Vol. I, Pt. 2, p. 274). The new large pools had not, as, in the nature of things, they could not have been, foreseen by crude oil purchasers; otherwise, it is reasonably certain that no such amounts of oil would have been stored above ground. It is obvious that it is unwise to increase already excessive above-ground storage, attended as it necessarily is by some degree of deterioration from year to year and frozen investments in its cost (see Bureau of Mines, Bulletins 155 and 200), at times when it is clear that there is an abundance of fresh oil available at the wells for a considerable period of time in the future. The amount of oil bought in Oklahoma from all of its pools amounts to around only 500,000 barrels per day (R. Vol. II, Pt. 2, p. 127).

Likewise, it is obviously unwise in these circumstances, and it would be most unreasonable to expect individual non-integrated oil producers in the Oklahoma City field or elsewhere to store any of their own production in excess of amounts they can market, in above-ground tanks in order to save their properties from drainage by the integrated companies like the plaintiff. They might as well permit their estates to be destroyed by drainage by others as to

destroy them themselves by costly storage of deteriorating and unsalable oil. Effective co-equal right protection cannot be accomplished in that way. Furthermore, it assumes a financial ability on the part of every one of them to provide the required storage. Many of them cannot possibly do so, for they have not the means and could not obtain it. Many of them, though entirely willing to do so, cannot even contribute to the funds required to maintain proration. (McLennon, R. Vol. I, part 2, p. 304.) The best and cheapest place to hold oil in storage is in the natural reservoirs where it originally accumulated and will not waste.

The transportation facilities which enter the field are these, namely, pipe lines, one belonging to each of ten companies, having a total transporting capacity of 316,000 barrels per day, and loading racks, one belonging to each of twelve concerns, on the railroads which pass through or near the field, having a total capacity of 123,000 barrels per day (plaintiff's Exhibit 17, R. Vol. II, part 1, pp. 11-12; Collins, R. Vol. I, part 2, p. 295). These capacities total 439,000 barrels per day, so that if these were made available for transportation of that amount, regulation would still be necessary for the protection of correlative rights. The Prairie Oil & Gas Company, owner of a very small amount of production in said field, and whose pipe line capacity ranges from 45,000 to 50,000 barrels per day, had discontinued purchasing oil prior to the trial in June, 1931 (Collins, R. Vol. I, part 2, p. 297).

Most of these pipe lines connect with so-called "trunk lines" of their owners, built long before the field was dis-

covered, which pass north and south through the state at points considerably east of the Oklahoma City field, and can take only such amounts of oil as can be received into the trunk lines with which they connect, because of oil in the trunk lines which has been taken from other fields (Collins, *ibid* 297). Hence, these pipe line facilities entering the Oklahoma City field are not at all necessarily as large as the actual capacities of the lines themselves would indicate, even if their owners were willing to buy oil equal thereto in amount.

Each of the fifty-three leaseholders in the pool is the possessor of a right to reduce to possession a portion of the oil contained in the common pool. Each one regards his own right to be as sacred and certain as that of any of the others, although it does seem that the plaintiff regards its right as superior to that of others.

When we contemplate the situation in which the thirty-six non-integrated companies above mentioned would find themselves if production substantially above the market demand were permitted for even a short period of time, or only slightly above for a long period of time, we readily perceive that in practice it would be but a short time until these thirty-six proprietors, being unable longer properly to store their excess of production, and some of them not being able to do so at all, correlative rights would be destroyed, and some of said producers, so far as their Oklahoma City field holdings were concerned, would be literally wiped out. It may be taken for granted that the nine companies which own their own pipe lines and refineries would

transport as much as possible of the full production of their own wells. The non-integrated producers would be seriously injured or destroyed either by drainage or, by doing as producers did in Cushing and Healdton, that is, by running their oil to earthen storage where it would deteriorate and waste, and that, if any, which they would be able finally to dispose of would bring practically nothing.

It is perfectly apparent that if, in this pool, correlative rights are to be protected, some limitation on production must be imposed and ratable taking must be required. The question is: What shall the limitation be? Shall it be 25 per cent of the oil-producing potentials of the wells, or a total of 2,225,000 barrels? Of such amounts, if the purchasing companies took ratably, only 200,000 barrels (the amount demanded July 1, 1931) would be purchased and/or taken from the fifty-three producers of the field, and this would leave 2,025,000 to be stored at least the first day. Such a thing is unthinkable. Shall it be 10 per cent or 890,000 barrels per day, thus leaving 690,000 barrels to be stored each day? A large amount would have to be stored from day to day until the total amount in storage would be so absurdly large as to be as equally unthinkable as would be the situation if the allowable production were placed at 25 per cent of potential. Beyond question, it is more reasonable and more practicable for the production to be limited to the amount which the market will absorb. *If it is to be larger than that, then by what test shall it be determined? We know of none.*

Ratable taking based on market demand injures no producer. No owner is thereby deprived of any part of his fair share of the common supply of oil. In the absence of ratable taking, no one producer in said field will sit supinely by and see his own right to draw upon the store of oil destroyed or even seriously injured. It is a question as to whether the state will allow the battle of destruction of rights and property values to rage and an irreplaceable natural resource to be wasted, and fresh-water streams and farm lands to be ruined, or whether it will extend its protecting hand to maintain order and to regulate conduct in such manner as to protect rights. In the absence of the extension of a protecting hand, it is inevitable that rights and property values will be destroyed and inestimable waste committed. In the absence of regulation of a type comparable to that prescribed by the law and orders involved in this action, the integrated producer like the plaintiff will either appropriate a vastly larger proportion of the common fund than his fair share thereof, or, compel the non-integrated producers to store their production, and they will place much of it in earthen storage as was actually done in the Glenn pool, the Cushing pool and the Healdton pool. Meanwhile, inestimable underground waste takes place to the injury of all concerned.

If, as was the case in the Cushing field in 1914, as shown by the old orders referred to, when the potentials of all the wells therein amounted to no more than 300,000 barrels per day, and the market demand amounted to as much as 200,000 barrels per day, thus leaving an excess of

potential over demand amounting to only 100,000 barrels per day, oil was stored in earthen and steel tankage "and many thousand barrels" were "dammed up in the creeks," and "10,000,000 barrels of surplus production" was stored in said field, and many of the producers were "carried along in a whirl of production as helpless as a child in mid-stream" and could not prevent the inevitable results and if in the Healdton field in 1914, with its potential production of only 70,000 barrels per day, pipe line facilities of 21,000 barrels per day and market demand for only 15,000 barrels per day, 600,000 barrels of oil was at one time in earthen storage and heavy rains and floods carried much of it down the streams and injured crops and vegetation and stock-water on farm lands; and if in those fields the premature blowing of gas from the oil sands prevented their rock pressures from being conserved for the continued expulsion of oil and increasing the ultimate production thereof—if those results flowed from a failure to limit production to market demand and to require ratable taking in fields with no greater potentials than those two fields had, then what, may be ask, might be expected in the form of waste and destruction of correlative rights in the Oklahoma City field with its gigantic potential of nearly 9,000,000 barrels per day, or when divided by three, of nearly 3,000,000 barrels per day, and a market demand which at its highest is as low as 200,000 barrels per day, if production therein is not limited to market demand and ratable taking is not required? There is a greater reason for such a limitation and requirement in the case of a field with such an extremely

large potential and comparatively low market demand than for a like regulation of a field with a relatively low potential and relatively high market demand.

PLAINTIFF'S ABILITY TO PRODUCE WITHOUT WASTE.

Although it may be true that plaintiff individually commits no waste nor threatens to do so, nevertheless the state has the power and the statute is framed in pursuance of a policy to regulate pools or common sources of supply as units in order better to insure against waste by anyone, and to require plaintiff to conform to such reasonable regulation.

The plaintiff says and the court found (Finding V, R. Vol. I, Pt. 2, p. 182) that it does not pour any oil on the ground or otherwise waste any thereof on the surface, and that it makes a beneficial use of what it produces. Plaintiff contends that it is only against such physical waste that the state may adopt a police regulation. (Plaintiff's brief, p. 38.)

This statute not only prohibits waste by an individual but it also looks to the pool or "common source of supply" as a unit for the application of preventive measures against waste. By section 4 the legislature enjoins upon the Commission the duty of examining each such "common source of supply" and if conditions are there found which inevitably lead to waste by or in the pool as a whole then the pool as such is to be regulated and there is to be no selection of individual producers to bear the brunt to the ex-

clusion of others but all are to share the inconvenience of the necessary curtailment proportionately. Thus when a pool such as Oklahoma City has a potential production of 2,500,000 barrels per day (the gauge divided by three; see, Finding XIV, R. Vol. I, Pt. 2, pp. 193-194) and the marketing facilities or market demands aggregate only 200,000 barrels or less per day, it becomes apparent that it is inevitable and unavoidable that the "full production" from that common s o u r c e of supply cannot be had without waste. So, the mandate of the statute then is that the pool as a whole shall be curtailed and without regard to which of the producers therein may have better or more ample facilities than the others. Each and all are required to submit to a proportional limitation in order that each and all shall be protected in his co-equal right to produce while waste is thus being prevented.

This method accomplishes the following:

(a) Prevents waste from the pool by any one in the pool.

(b) Secures to each operator his co-equal right to produce from the pool.

(c) Prevents a disproportionate or wasteful exercise of the right to the detriment of the others.

To adopt the plaintiff's contention that each operator in the pool must be allowed to produce from his wells all of the oil that he individually can produce without waste and which he can put to a beneficial use, would be the adoption of a standard for proration which would defeat rather than promote the ends above enumerated.

Neither such standard nor an apportioning of the right to produce according to capital invested would prevent waste where the potential production of the pool exceeded the sum of all the marketing facilities of all the operators therein. It would not even secure to each and every operator the right to produce from the pool. It would not prevent a disproportionate use of the right to take but would promote it. Thus such a standard would accomplish none of the purposes which the Oklahoma Legislature had in mind.

Plaintiff's contention, if sound, would award to each of the several individual intergreted producers in the Oklahoma City pool, including the plaintiff, the same right which plaintiff asserts. This would attribute to each of the integrated producers an undue proportionate part of the common fund of oil beneath the lands of themselves and all of the other proprietors therein. To adopt plaintiff's view is to say that there is no such thing as a co-equal right on the part of each proprietor to reduce to possession a due proportionate part of the oil in the common supply, or that, if it exists, its exercise cannot be regulated by law. Also by the disproportionate withdrawals which would be made, underground waste would result and thereby additional serious injury to correlative rights would occur.

This court in the *Ohio Oil Company, Lindsley, West* and *Walls* cases did not hold that the extent and limits of the legislative power to protect co-equal rights were reached and exhausted by a prohibition against any operator wasting oil or gas on the surface or putting the produced oil or gas to a non-beneficial use. This court has not held that

a legislature may not restrict a producer to less than the natural flow of his wells in order to protect co-equal rights. In fact its holding is that it can do so. Said cases expressly hold that the protection of co-equal rights can be afforded by prohibiting production in *excessive* amounts from the common fund of oil and gas if to produce excessively will injure others having a like and equal right to make draughts upon the common fund.

In the *West* case this court discussing its decision in the *Ohio Oil Company* case, said:

> "Against the (Indiana) statute was urged the rights of property assured by the 14th Amendment of the Constitution of the United States. The case is a valuable one and clearly announces the right of an owner to the soil beneath it, and the relation of his rights to all other owners of the surface of the soil. The right of taking the gas, it was said, was common to all owners of the surface, and because of such a common right in all land-owners, *an unlimited use (against a wasteful use the statute was directed) by any it was competent for the state to prohibit.*" (Italics ours.)

Therein the court also held that it was because of the purpose of the Indiana statute "to secure to the common owners of the gas a proportionate acquisition of it—a reduction to possession and property," that it was sustained.

In the *Walls* case it is expressed in this language:

> "It was decided, however, that before that event occurs, indeed, in prevention of it, the state may interpose its power to prevent a waste or *disproportionate* use of either oil or gas by a particular owner in

order to conserve the equal right of other owners and advance the public interest."

The fact that the specific provision of the Indiana statute was that oil or gas should not be permitted to escape into the open air for longer than two days, does not mean that the decision in the *Ohio Oil Company* case is to be interpreted as meaning that a legislature could do no more than to forbid surface waste of what is produced. The property right pointed out and defined by the court was a right to reduce a portion of the common fund to possession and thus acquire property in the amount produced. The court in the *Ohio Oil Company* case said that "the use by one of his power to seek to convert a part of the common fund to actual possession may result in an undue proportion being attributed to one of the possessors of the right to the detriment of others * * *." The court then added the statement "or by waste by one or more to the annihilation of the rights of the remainder."

The New York statute involved in the *Lindsley* case prohibited production of the mineral waters by artificial means (whenever the production was for a certain named purpose) but it did not prohibit the natural flow of the wells. The principle of the *Ohio Oil Company* case was applied to sustain said statute, but the fact that the statute went no further than to prohibit production by artificial means and hence to permit the natural flow of the wells did not lead this court to qualify to the least extent its announcement of the controlling principle. In fact the court stated that "were the question an open one we still should solve it the same way."

So it clearly appears that the controlling principle is by no means qualified to the extent the plaintiff in its argument by necessary implication asserts it to be.

Plaintiff's contention denies the legislative power thus conclusively shown to exist to select a reasonable standard applicable to all alike for correlative right protection. It entirely ignores the fact that correlative rights can be injured far more seriously by disproportionate extractions from the common supply of oil than by waste committed upon the surface.

PLAINTIFF'S CAPITAL INVESTMENT THEORY.

This theory is presented on pages 63 to 69 of plaintiff's brief. If adopted, it would substitute for proration, measured by the potential production of the wells of the various land owners in a common source of supply, a criterion consisting wholly of investments extraneous to the pool itself.

If we should assume that said theory is itself a reasonable one, then whether it should be adopted is distinctly a question addressing itself to the discretion of the legislature since it goes to the wisdom and not the power of the law-makers.

What we have said under the heading "The Plaintiff's Ability to Produce Without Waste" furnishes as well a complete answer to counsel's argument in support of this theory.

Proration, instead of dealing with those who are engaged in the business of refining and marketing the refined

oil, regulates and protects the rights of the owners of land in the pool from which the oil is produced, rights appertaining to the ownership of real property. The regulation is ultimately but a regulation of real property and operates to preserve and protect such rights *(Ohio Oil Co.* v. *Indiana,* 177 U. S. 190, 212, 44 L. ed. 729-740). It operates upon *land owners as producers,* and not as refiners and marketers of the oil they may produce.

Counsel's contention with reference to capital investments as a suggested standard of proration reveals the plaintiff's true position to be that, since it has its own wells connected to its own pipe lines and can transport its own oil to its own refinery, it cannot be compelled in times of over-production to submit to the statutory requirement of proportional taking to prevent waste and to protect the correlative rights of all the producers in the field, the majority of whom do not have pipe lines or refineries or other outlets of their own. This suggestion challenges the power of the State of Oklahoma through its laws to protect the public welfare against the waste of an irreplaceable natural resource, a power clearly embodied as an integral part of the police power of the state, and the suggestion, if given effect, would destroy the ancient maxim of the common law, *"Sic utere tuo ut alienum non laedas,"* that everyone shall so use his property as not to injure his neighbors. This maxim forms a fundamental part of the statutory enactment in question, for one of its principal purposes is to protect the correlative rights of *the producers as such* in each common source of supply, a

purpose clearly designed to prevent the powerful integrated or the more fortunately situated producers from injuring or destroying the rights and the property of their less fortunately situated neighbors, the non-integrated producers, by disproportional takings, resulting in drainage, underground waste and other forms of discrimination. In short, to paraphrase some language in the *Ohio Oil Company* case, the Oklahoma law recognizes and protects private property rights, and prevents them from being taken by one of the common owners without regard to the enjoyment of the others.

THE VALIDITY OF SECTION 2 OF THE ACT IS NOT INVOLVED IN THIS SUIT.

Section 7955, C. O. S. 1921 (Sec. 2 of Original Act), is a separate and independent statute or section.

If this section be dropped as invalid, the remaining sections are fully operative as law.

The Corporation Commission has never attempted to fix the value of crude oil under this section, or regulate the production of crude oil with reference thereto.

No attempt has been made to enforce the provisions of this section against appellant or other producers of oil, and the validity thereof is not involved in this suit.

It is not necessary to resort to this section as an aid to the construction of the other provisions of the act.

(Under the heading "Price Fixing" we discuss plaintiff's contention that by the orders in question the Commission has attempted to control the price of oil.)

An examination of the orders of the Commission in force at the time of the trial, or any that preceded them in the current series, will not disclose any finding or order made under section 2 fixing the value of crude oil at the well or elsewhere, or any regulation made with reference thereto.

The record discloses that only one application was ever made to the Commission to determine such value. Upon that occasion, by Order 1022 (R. Vol. II, Pt. 3, p. 264), entered February 18, 1916, the application was dismissed, because the Commission was "of the opinion that the fixing of a price of crude oil under section 2 of this act is absolutely impossible and impracticable."

The first order of the Commission in the administration of the law was No. 920, issued June 5, 1915. (R. Vol. II, Pt. 4, p. 440). In that order the Commission stated that "section 2 is not involved in the complaint" (R. *ibid* 445), and it discussed the validity of sections 3 and 4 in the light of the decisions of this court, hereinbefore reviewed, and having reached the conclusion that such sections of the statute were valid, made its order limiting production in the Healdton field to the market demand, and limiting each producer to that proportion of the capacity of his wells, which the market demand bore to the full production of the pool. The Commission expressly stated that it predicated "its order upon the authority vested in the Commission by sections 1, 3, 4 and 5 of the law known as the Conservation Act, and particularly that part regulating the equitable taking of oil among the operators" *(ibid,* p. 454).

In Finding of Fact X (R. Vol. I, Pt. 2, p. 189), concurred in by all the judges constituting the court (R. Vol. I, Pt. 2, p. 212), it is recited that:

> "The said orders of the Corporation Commission which are attacked in this suit, were made and entered under and pursuant to the provisions of Secs. 1, 3, 4, 5 and 6 of the Oklahoma Oil Conservation Act, approved February 11, 1915."

That was repeated in the Conclusions of Law (7) (R. Vol. I, Pt. 2, p. 214).

The court also found that "The Commission has never entered any order under section 2 of said act." (Finding XXVIII, R. Vol. I, Pt. 2, pp. 209, 210.)

The District Court held in the opinion by Circuit Judges Cotteral and Phillips (R. Vol. I, Pt. 2, p. 224) that sections 1, 3, 4, 5, 6 and 7 of the act provide a complete scheme for the enforcement, through rules and regulations promulgated by the Corporation Commission, of the general rules provided in sections 3 and 4 for the prevention of waste and for the protection of the co-equal rights of the several owners of land over a single pool of oil and gas to take from a common source of supply, and may be severed from the remaining portions of the act.

The State Supreme Court in effect held in the *Julian* case (145 Okl. 237, 292 Pac. 840) that section 2 is an independent and separable provision, and the remainder of the original act is complete and enforceable without reference thereto. The court in that case sustained the validity of sections 7954, 7956, 7957 and 7959, C. O. S. 1921 (Secs.

1, 3, 4 and 6 of the original act) as a valid exercise of the legislative police power, and held that the Corporation Commission had jurisdiction to promulgate rules and regulations for the enforcement thereof. In concluding the opinion, the court said:

> "Section 7955, C. O. S. 1921, which is section 2 of the Oil Conservation Law of 1915 (Laws, 1915, ch. 25), is not involved in this action, and it is not to be assumed that if the Corporation Commission were attempting to fix the market value of oil under that section, we would sustain same."

In *Reagan* v. *Farmers L. & T. Co.*, 154 U. S. 362, 395, this court said:

> *"It is familiar law that one section or part of an act may be invalid without affecting the validity of the remaining portion of the statute. Any independent provision may be thus dropped out if that which is left is fully operative as a law, unless it is evident from a consideration of all the sections that the legislature would not have enacted that which is within, independently of that beyond its power."*

See also:

Connally v. *Union Sewer Pipe Co.*, 184 U. S. 540, 565;

Field v. *Clark*, 143 U. S. 649;

Pollack v. *Farmers L. & T. Co.*, 158 U. S. 601, 635;

Little Rock & Ft. Smith Ry. v. *Northern*, 120 U. S. 97;

Allen v. *Louisiana*, 103 U. S. 80;

Florida Cent. R. R. Co. v. *Schulte*, 103 U. S. 118.

Courts sometimes have difficulty in determining whether a given act would have been passed with the independent invalid portion left out, that is, whether it was the legislative intent that the entire act should stand or fall together. There is no such difficulty here. The legislature declared in section 10 of the original act,

> "that the invalidity of any section, sub-division, clause or sentence of this act shall not in any manner affect the validity of the remaining portion thereof."

This provision overcomes any presumption that the legislature intended that the act be effective as an entirety, and creates the opposite one of separability, "and this presumption" (of separability) "must be overcome by considerations which make *evident* the inseparability of its provisions or the *clear probability* that the invalid part being eliminated, the legislature would not have been satisfied with what remains." *Williams* v. *Standard Oil Co.*, 278 U. S. 235, 242. There are no reasonable considerations that can be indulged in this case that make evident or establish the clear probability that the legislature would not have been satisfied to pass the act with section 2 eliminated. Even in the absence of section 10 (to employ the language of this court in *Diamond Glue Co.* v. *United States Glue Co.*, 187 U. S. 611, 617), "the independence seems to us obvious on reading the statute."

The section claimed to be invalid may be entirely omitted and passed over in reading the act, and it will readily be observed that the remainder is fully operative as a law. That section operates in a field entirely distinct from the remainder of the act, and is clearly designed to accomplish

a different purpose, and employs a different means to the accomplishment of its ends.

That section *prohibits* the production of any oil at all when there is no demand for its purchase at its value at the well, as ascertained on the basis prescribed in the section. Whereas section 7957 (Sec. 4 of the original act) *permits* the production of oil, but limits it to the amount that may be produced without waste "as herein defined," that is, as defined in section 7956 (Sec. 3), and provides for the proration of the oil that may be so produced.

The respective fields in which section 2, and sections 1, 3 and 4 operate are separate and distinct. Section 2 operates exclusively in the field of values or prices, and prohibits the production of oil from a well when the prescribed value thereat is not forthcoming. That section deals with the question of values, without any regard whatever to the question of protection of correlative rights, by the prevention of waste. The other sections in terms, and as they have been construed and administered by the Commission for over fifteen years, and as they have been construed by the Supreme Court of the state in the *Julian* case, occupy the other and distinct field of waste prevention, and protection of correlative rights of those having the privilege to produce from a common source of supply. Those sections deal with those matters without any reference whatever to the question of the value or price of oil. Under section 3, the Commission has the authority to protect all collective owners against acts that would result in underground waste, by regulating the method of drilling, casing and equipping

wells. As heretofore stated, it has exercised that authority for years. (Order 1299, July 16, 1917, referred to in Order 5437, R. Vol. II, Pt. 2, p. 195.) These regulations prohibit certain acts and require others to be performed in a prescribed way. Such regulations act directly on the individual operator. They have nothing to do with the value of oil under the provisions of section 2. Reasonable regulations pertaining to the method of drilling, casing and equipping wells for the purpose of preventing underground waste made by the Commission under the authority of section 3 are valid. Certainly, the validity of section 3 in so far as it confers such authority, in no sense depends upon the validity of section 2. Its interpretation is in nowise aided by any part of section 2.

We have shown the existence at times of certain evils growing out of the unrestricted production of oil from a common source of supply which were known to the general public and the legislature at the time of the passage of this act, and which the act was designed to remedy. Certain results, especially harmful and in some instances destructive to the rights of some of those having the privilege to produce from a common source of supply, always attended the production of oil from such source in excess of the quantity that could be marketed, denominated in section 3, defining waste, as "production in excess of transportation or marketing facilities or reasonable market demands." We have shown other results, injurious to the rights of producers, as a consequence of full production, known at the time of the enactment of the law, and denominated therein as "underground waste."

These consequences of excessive production occur without regard to the value or price of oil. In no conceivable way could a regulation prescribing the value of oil, afford a remedy therefor. The only effective remedy that has been conceived to prevent such injuries to correlative rights is limitation on the total amount of oil produced from the common source of supply. So the legislature, by section 4, provided for such limitation, "whenever the full production from any common source of supply of crude oil or petroleum in this state can only be had under conditions constituting waste as herein defined." Among the conditions constituting waste as so defined, are the types of "underground waste" heretofore described, and waste incident to production in excess of the quantity or amount that could be marketed. The limitation in the case of underground waste, would be to the amount that would best utilize the reservoir energy to secure the maximum ultimate recovery. Obviously, the value or price of oil could have nothing to do with a limitation for that purpose. In the case of production in excess of transportation and marketing facilities or of reasonable market demands, the limitation would be to the amount that could be transported, by the available facilities or the amount that could be marketed, whichever happened at the time to be the lower. Obviously, it is not necessary in limiting production for that purpose, to take into consideration the element of value. In this field the statute is dealing with quantities, numbers of barrels and not price or value. Section 4 then provides that such limitation of production from the entire source of supply should be accomplished by limiting the production of each

person having the privilege to produce from the common source, to that proportion of the full production of his wells which the amount of production to which the entire pool is limited bears to the full production thereof. Clearly, the value or price of oil is not a factor in the apportionment. It is clear that the legislative intent and purpose in the enactment of sections 1, 3 and 4, in view of the evils to be remedied, was to protect the correlative rights of all the owners, by regulations to secure to each his fair and equitable share of the oil that could be produced from the common reservoir during the period that a limitation on production was necessary to prevent the wastes and consequent injury to correlative rights incident to full production.

It is apparent that while section 2 deals exclusively with values of oil that the remaining provisions of the act deal exclusively with quantities.

In view of conditions existing at and before the enactment of the law, the provisions of sections 1, 3 and 4 were wholesome and necessary police regulations. Those provisions can be interpreted and administered without the aid of or any reference whatever to section 2.

It is asserted that section 2 is the keystone of the legislative arch. We disagree. We think that the provisions of section 4 for proportional production is the keystone. In any event the main purpose of this suit is to strike down the provision for proportional production. If it is eliminated, the principal purpose sought to be accomplished by the act, and of the Commission in its administra-

tion; *viz.*, the protection of the rights of all the collective owners, will be defeated.

It is asserted that the whole purpose of the act is price-fixing. That sections 1, 3 and 4 are a mere mask for, or adjuncts to the price-fixing provisions of section 2. It appears to us that the provisions of section 2 stand out rather clearly, and are in no way disguised by the other sections. We submit that if the sole intent of the legislature was to regulate prices by fixing values, that purpose is expressed by section 2, and its enforcement cannot possibly be in anywise aided by sections 1, 3, 4 and 5.

The elimination of section 2 (7955, C. O. S. 1921) from the act does not render the remaining part too uncertain and indefinite to confer upon the Commission the power and authority it exercises through its rules and regulations.

—*C. C. Julian Oil & Royalties Co.* v. *Capshaw,* 145 Okl. 247, 292 Pac. 841;

Quinton Relief Oil & Gas Co. v. *Corporation Commission,* 101 Okl. 164, 224 Pac. 156;

Levy Leasing Co. v. *Siegel,* 258 U. S. 242;

Miller v. *Strahl,* 239 U. S. 426;

Omaechevorria v. *Idaho,* 246 U. S. 343;

Plymouth Coal Co. v. *Pennsylvania,* 232 U. S. 531.

Those familiar with the oil production business, and conditions under which it is conducted, and desirous of observing the law have little difficulty in determining its meaning. *Omaechevorria* v. *Idaho,* 264 U. S. 343, 348.

The only terms employed in section 3, necessary to be considered in connection with this particular discussion, are "underground waste" and "waste incident to the production of oil in excess of transportation or marketing facilities, or reasonable market demands."

We have heretofore stated the meaning of "underground waste," as well understood among producers of oil, as being oil wasted underground, that is, oil left in the natural reservoir unrecovered when the wells can no longer be profitably operated and are finally abandoned, but which could have been recovered by proper operations (Arnold, Vol. I, Pt. 2, pp. 326, 328). It occurs whenever the operators or producers so carelessly or negligently or inefficiently complete and/or operate their oil wells that they leave in the reservoirs oil which might and could have been recovered if they had not been so careless or negligent or inefficient. The chief causes of its occurrence are *(a)* the waste or improper utilization of the gas energy naturally stored in the reservoir containing the oil, and *(b)* by preventable water-encroachment or intrusion (McWilliams, R. Vol. I, Pt. 2, p. 340; Stalcup, *ibid,* p. 360). We have heretofore detailed how such waste is caused, among others, by too rapid or disproportional removal of the oil and gas, which is prevented by limitation of production.

The clause "waste *incident to* the production of crude oil or petroleum in excess of transportation or marketing facilities, or reasonable market demands," as used in section 3, is simply a legislative recognition and declaration that certain wastes, of various types heretofore developed in this brief, had resulted and would necessarily result, as

an incident to the production of such excess amount of oil. Such wastes as do so occur, result in injury to and impairment of the rights of some persons having the privilege to produce from a common source of supply. The inclusion of this clause in section 3, defining waste, subjected such excessive production to regulation by the provisions of section 4 under the general terms "conditions constituting waste" as employed in that section.

These terms are readily understood, and have a definite meaning which is neither enlarged, limited, nor in anywise affected by considerations of price or value. We agree with counsel (plaintiff's brief, p. 51) that "demand" has to do with "quantity," and not price. Clearly, "market demand" is not synonymous with "market price." "Market demand" means the quantity for which there is a demand in the market. "Market price" is the equivalent yielded in money for the commodity dealt in. The word "reasonable" is frequently employed as a qualifying term in legislation, and other legal phraseology. As applied to "market demand," it has the same significance as when applied to "market price." In the first it qualifies "demand"; in the other "price."

It is the universal rule of statutory construction that if a law is susceptible of two interpretations, one of which would render it valid and the other invalid, the courts will adopt the one which sustains its validity. If it should be thought that under the construction contended for by counsel, the entire act is rendered invalid, we respectfully submit that that interpretation should be rejected, and the

uniform interpretation by the officers charged with its administration for more than fifteen years and of the Supreme Court of the State of Oklahoma and of the District Court in this case, should be adopted.

SECTION 3 (SEC. 7956, C. O. S. 1921) IS NOT FOR THE PURPOSE, NOR DOES IT HAVE THE NECESSARY EFFECT, OF AUTHORIZING AN AGENCY OF THE STATE TO CONTROL PRICES FOR THE BENEFIT OF ANY CLASS.

In view of what has been said in connection with other propositions relative to the evident purpose of sections 1, 3 and 4 of the act, it should be unnecessary to say more at this place.

Three of the elements (there may be others) of a market are supply, demand and price. The generally accepted theory is that the first two have influence on the third. It is argued that the provisions of the act other than section 2, give the Commission control of supply and demand, hence it vests them with control of price. *The act does not confer such authority with reference to either demand or supply.* Under the power conferred by section 6 to determine any questions relating to the enforcement of the act, the Commission has power *to determine the question of fact* of the reasonable market demand from a given source of supply, and the full, or potential production thereof, and of the several wells therein.

Having determined those facts, the statute prescribes the percentage of the potential supply that shall be pro-

duced by each well to meet the current demand. It has not power to create demand, or increase or decrease it. The demand is created by the buyers or consumers, and its amount is governed by them. Any error as to the findings of the Commission is subject to immediate judicial review (see appellant's brief, p. 164) by appeal to the Supreme Court by any person interested.

The supply of a commodity in so far as it is an element in determining market price is not limited to the amount that is brought to market each day, especially where, as under the provisions of this act, all that the buyers wish to take that day is offered. The supply of wheat that influences price is not solely the amount in the elevators and that is threshed each day, as long as there is sufficient available for immediate consumption, but the amount of the probable yield of the current crop is an important factor. Statistics as to the condition of the major crops are gathered by the government, and from time to time forecasts of the probable yield are published. These forecasts, as well as the amount in the granaries and warehouses, affect prices. Petroleum engineers can estimate the probable ultimate recovery from the developed area of oil fields, after drilling has revealed the thickness and porosity of sands and other factors. This developed potential supply of oil, while yet stored in the ground, affects prices as well as that produced and stored aboveground. See *Economics of the Crude Oil Potential in the United States,* by Joseph E. Pogue, Petroleum Development & Technology, 1931 (Petroleum Division, American Institute of Mining & Metallurgical Engineers), page 633. As long as the production each

day is sufficient to supply all market demands at the time, it is not apparent that limitation of production to that amount is a material factor in price structure. That was Mr. Pogue's conclusion.

The actual administration of this act did not have the effect of preventing a steady decline in prices. That and the entire question of "price-fixing" will be fully developed under a subsequent head of this brief.

PRICE FIXING.

The Commission has not attempted directly or indirectly to fix or control prices.

The regulations of the Commission were not made pursuant to provisions of Section 2 of the Act. (Finding XXVIII, R. Vol. I, Pt. 2, pp. 209, 210.) They were issued pursuant to Sections 1, 3, 4, 5 and 6. (Finding X, *ibid* 189.)

In Finding XXVIII, the trial court by two of its judges, found, among other things, the following:

> "The court finds that none of the orders of the Commission have been made and entered for the purpose of fixing or maintaining the price of crude oil, or that the orders have had that effect."

Therein, the court also found:

> "There was no evidence introduced at the trial of this cause showing or tending to show that the orders of the Commission were intended to fix or control the price of crude oil."

Is the effect, if any, of the orders, rules and regula-

tions of the Commission, on the price of crude oil, an incidental one or is it direct and purposed?

We have already shown (see discussion under headings, "The Correlation of the Several Provisions of the Oklahoma Oil Proration Law and the Conditions Which Invoked Their Enactment," and "The Particular Regulations Prescribed by the Act in Question Bear a Reasonable Relation to the Prevention of Waste and the Protection of the Correlative Rights of the Land Proprietors in a Common Source of Supply") that in order to protect correlative rights in an oil pool where the potential production exceeds demands, it is not only reasonable, but necessary, to limit the production in the pool to the amount of the reasonable market demand and/or transportation and marketing facilities. We believe we there demonstrated that if the allowed production is in excess of said demand and facilities, then waste will result and co-equal rights will be injured and, if the allowables are substantially excessive for a short time or slightly excessive for a long time, such rights may be entirely wiped out; that the integrated producers, like plaintiff, will be greatly favored and, in fact, if the percentage is considerably above that which the market will absorb, the pool will be practically turned over to them and the non-integrated producers excluded.

The existence of this *paramount and controlling purpose* for such limitation of production and *the necessity* for said particular limitation, in order to gain the end of correlative right protection, completely negatives the idea of the existence of a purpose to fix or maintain prices; and from this it necessarily follows that if an effect thereof is

to stabilize the price of oil, it is merely an incidental effect. It is not different in principle from other incidental effects of police regulations, such as their effect on the degree of success with which a particular business may be conducted, as in the *Ohio Oil Company,* the *Lindsley* and the *Walls* cases, or the effect upon the value of property, as in zoning regulations. In zoning cases, property values are affected, some are lowered and some raised. Pure food laws operate to take adulterated foods out of competition with pure foods. The abatement of nuisances affects values and prices. To say that such incidental results destroy the validity of police regulations is to say that the police power itself does not exist.

In 1927, when the first of the present series of orders was made, the price of oil in Oklahoma was more than $2.00 per barrel and it gradually declined until, in June, 1931, it was 35c per barrel (Finding XXVIII, *supra).* The decline was gradual. For example, it declined from $1.01 per barrel in October, 1930, to 67c in December, 1930, to 63c in March, 1931, and to 35c in June, 1931 (Leverton, R. Vol. I, Pt. 2, pp. 310-312). Counsel's statement on page 74 of appellant's brief that on March 4, 1931, one company cut the price from $1.07 to 67c, is unsupported by any proof or finding, and is refuted by the testimony of Mr. Leverton. Regardless of these regulations the price of crude oil followed a natural course downward responsive to the general conditions in the industry and by reason of increased potentials over the United States as a whole.

By sub-finding (k) of Order 5369, October 28, 1930

(R. Vol. II, Pt. 2, pp. 134-136), the Commission, dealing with the contention of some protestants against the making of the order that proration in Oklahoma was a scheme to maintain prices, declared that its orders have been and are based solely upon the purpose to prevent waste of oil in the state, and in the process of doing so to require ratable or proportional takings in pools where curtailment is necessary to prevent waste, and it there further declared that it had exercised its independent judgment in prescribing the orders and had not attempted to influence the price of oil or refined products, and that if any such effect had occurred it was incidental and not intended. (Finding XXVIII.) It also there found that since 1926 the price of oil had declined 40 per cent and declared that it had never limited production in any pool below the market demand, and further that the prices at which oil was sold were fixed, not by the Commission, but by the free play of competition and the relationship between supply and demand in the world market.

From 65 to 75 per cent of the oil produced in Oklahoma is sold to refiners and purchasers who take it outside of the state; it is sold in the world market for petroleum in competition with oil from other states and foreign countries; practically all of the oil so sold in Oklahoma is sold at a regular posted market price offered by the principal purchasers of oil (Finding XXX, R. Vol. I, Pt. 2, p. 210).

There was "no evidence" before the Commission "that proration in Oklahoma has had any effect upon" the price of oil (Order 5369, R. Vol. II, Pt. 2, p. 134).

In said Finding XXVIII, the court below found that the evidence establishes that in each instance the Commission had allowed to be produced the full amount of the market demand for oil in each pool, and that there was no evidence in the case to the effect that there was a demand for more oil from any pool than the Commission had allowed to be produced.

The question of price fixing was one of fact, and the plaintiff does not, in the statement of the points upon which it would rely in this court (R. Vol. I, Pt. 2, pp. 406-411), question the correctness of these (or any other) findings of the trial court (par. 9, Sup. Ct. Rule 13). It therefore seems to us that these findings conclude the question here.

On page 106 of plaintiff's brief, it is stated in the heading that

> "the Commission has not at any time undertaken to protect the co-equal rights of the surface owners except during such periods as over-production was threatening the price structure."

The implication of this statement is that a threat to the price structure is the reason for proration. The statement is clearly incorrect when regard is had for the language and purpose of the act and the plainly-expressed intent and purpose of the orders of the Commission.

Section 4 of the statute does not provide for proportional taking except in one event, namely, whenever the full production from the common source of supply can be had only under conditions constituting waste as defined in the statute. This is a limitation upon the power of the Commission to order proration.

The proration orders involved in this action were, it is true, all issued at times when there was an "over-production," that is, a potential production in excess of market demands; in the affected pools, but they were not issued because the price structure was threatened, but, on the contrary, because of threatened waste of a most serious nature and in order to protect the correlative rights of the producers in the pools where that threat existed. The Commission found from evidence adduced at duly-conducted hearings (Finding X, R. *ibid* 189) that this threat of waste and injury to correlative rights was imminent. (See, Finding XXIV, R. *ibid,* pp. 199-200; also Finding VII, pp. 187-188.) The testimony it so received is in evidence here (R. Vol. II, Pt. 4, pp. 315-389). Without said evidence, it inescapably follows from the mere fact that the potential production in a pool is greatly in excess of the storage and transportation facilities therein, and reasonable market demands therein, that the commission of waste and the destruction of co-equal rights are threatened, and are, in fact, inevitable if measures for their prevention be not taken. If the conditions operate as a threat to price structure, such threat is a mere incident to the major threat of waste and co-equal right destruction.

Counsel cite and quote from the case of *McMillan* v. *Railroad Commission of Texas,* 51 Fed. (2d) 400. The opinion of the three-judge court in that case was predicated, as we interpret the opinion (we have not seen the findings of fact), upon a finding of fact, of the correctness of which we cannot judge, that the orders of the Texas Railroad Commission involved therein were made for the ulterior pur-

pose of maintaining a higher price for crude oil. We understand that an appeal is being taken from the decree therein to this court, and for that, as well as other reasons, we do not regard the case as an authority here.

Counsel for plaintiff (plaintiff's brief 107-110) quote and seem to place considerable emphasis upon certain selected recitals in the "opinion" of Honorable Paul Walker, Chairman of the Commission, handed down February 10, 1931 (Order 5437, R. Vol. II, Pt. 2, pp. 190-202). Chairman Walker, who assumed the duties of his office one month before the date on which he read said opinion (Finding I, R. Vol. I, Pt. 2, p. 177), fully explains what he meant by the expression that the market demand for oil is "a thing wholly elusive and most difficult, if not impossible, of determination," and the particular reason which prompted some of the parties to the proceeding to express a desire "to preserve the market stability and to protect interests elsewhere", and "the least possible market competition," and to suggest "the limiting of takings to the actual visible market capacity, and that, of course, on a ratable basis"; but plaintiff's counsel do not call attention to these explanations which Chairman Walker made. We respectfully refer the court to them by references to the record (R. *ibid*, pp. 194, 195, 198-199).

Following said opinion, the Commission itself increased the allowable production in said pool from 85,000 barrels to 125,000 barrels (R. *ibid*, pp. 202, 204).

From the portions of said opinion to which we have referred, three things are made clearly to appear, namely:

First, that the elusive market demand referred to was not the actual visible market demand for oil in the Oklahoma City pool, but was a demand which some of the protestants called "nebulous," in that it was for indeterminate amounts from undisclosed bidders;

Second, that the Commission was doing everything in its power to provide as large a market outlet as possible for the Oklahoma City pool, and was even willing to take a chance on the market absorbing the greater amount of allowable; and

Third, that the reference to the price of oil and the possibility of its declining below the cost of the operation of from 30,000 to 60,000 old stripper wells scattered over the state, or the Oklahoma City pool completely absorbing the market for oil from said wells, if the allowable in the Oklahoma City field should be increased, was merely a recital by Chairman Walker of arguments made by some of the protestants at the hearing. The significant fact is that after reciting the said argument and objections, the Commission proceeded to make an order increasing the allowable from the Oklahoma City field regardless of its possible effect upon the price of oil as adverted to by the said protestants; and hence Mr. Walker's opinion and the order of the Commission conclusively show not only that the price was not the controlling factor, but that the Commission refused to be controlled by the attitude of protestants who desired the price structure maintained for the protection of their "interests elsewhere," that is, in the old stripper wells. The opinion nowhere indicates that any producers

advanced any other or different reason than the one just mentioned, for preserving market stability.

As a part of their contention that the orders were price fixing, counsel argue (plaintiff's brief, p. 111) that the Commission allocated the markets to the different pools and *shifted them around "to suit itself."* That this position is contrary to the facts, see our discussion under the heading, "No Discrimination Against the Oklahoma City Pool."

If the law is within the sphere of legislative authority, then all questions relating to its incidental or indirect effects are to be addressed to the lawmakers and not to the courts.

If this statute, enforced as it has been by the Commission strictly in accordance with the legislative intent, has incidentally tended to promote the prosperity of the oil industry in Oklahoma or of the state generally, or to prevent economic demoralization, then it is not to be condemned but rather upheld for that reason. Cases which we consider in point are the following:

Bacon v. *Walker,* 204 U. S. 311, 51 L. ed. 499;

Sligh v. *Kirkwood,* 273 U. S. 52, 59 L. ed. 835;

C., B. & Q. R. Co. v. *People,* 200 U. S. 561, 50 L. ed. 600;

Liberty Warehouse Co. v. *Burley,* 276 U. S. 671, 72 L. ed. 475;

C. C. Julian Oil & Roy. Co. v. *Capshaw,* 145 Okl. 237, 292 Pac. 841;

People v. *Associated Oil Co.,* (Calif. Sup.) 294 Pac. 717.

In *Bacon v. Walker, supra,* after extensively reviewing several of its previous decisions, including *Ohio Oil Co.* v. *Indiana,* and referring to certain objections made by counsel for the appellant, this court said:

> "This view of the power (the police power) of the state, however, is too narrow. That power is not confined as we have said, to the suppression of what is offensive, disorderly or unsanitary. *It extends to so dealing with the conditions which exist in the state as to bring out of them the greatest welfare of its people. This is the principle of the cases which we have cited."* (Italics ours.)

NO DOMINATION BY MAJOR COMPANIES.

In plaintiff's brief, counsel, in stating the facts (pp. 11-21) have attempted to show that proration in Oklahoma has been controlled by the so-called "State-Wide Proration Committee," the membership of which, according to the statement, is "named by certain operators" and represents, not producers generally, but certain powerful producers, some of whom are large purchasers and refiners. Counsel say that "the control thus fixed in this committee, and its membership in succession has remained definitely constant." (Plaintiff's brief, p. 12.)

The alleged purpose of the alleged control is to favor the Seminole area over the Oklahoma City pool in respect of its market outlet and another alleged purpose is to maintain a high price for crude oil, although chief emphasis is placed on the former.

The State-wide Proration Committee is to be distinguished from the several Operators' Committees which were appointed by the Corporation Commission, one for each prorated pool. The latter was in each case appointed for the purpose of aiding and assisting the umpire and Commission in the administration of the order in so far as it applied to the pool for which they were appointed. These appointees were approved by the governor (R. Vol. II, Pt. 2, pp. 221-231).

The facts with reference to the personal interests of the companies with which the members of the former committee are associated are these, namely:

Prior to October, 1930, C. C. Herndon, connected with the Skelly Oil Company, was chairman of said committee. That company is not a purchaser of oil in either of these areas, and while it has production in both of them, it has a much larger potential production in the Oklahoma City pool than in the Seminole area (R. Vol. II, part 1, pp. 7, 13). The personnel of the committee was changed in October, 1930. At the time of the trial of this suit in June, 1931, the committee consisted of Messrs. Alvin Richards, chairman, Burdette Blue, vice-chairman, Joe Sidwell, R. M. Young, Wirt Franklin, Mr. Filley, Mr. Nicholas and H. B. Fell (R. Vol. I, part 2, p. 337). Alvin Richards, chairman of the new committee, is the attorney for The Pure Oil Company, which has production in the Greater Seminole area but none in the Oklahoma City pool. Burdette Blue, vice-chairman of the committee, is executive vice-president of the Indian Territory Illuminating Oil Company, which

has production in both areas, but a very much larger potential production in the Oklahoma City pool *(ibid,* p. 337). That company is a subsidiary of the Cities Service Company, of which also the Empire Pipe Line Company is a subsidiary, and the "Empire" is a purchaser of oil in both fields, having a pipe line capacity of 10,000 barrels in the Seminole and of 40,000 to 45,000 barrels in the Oklahoma City pool (plaintiff's Exhibits 16 and 17, R. Vol. II, part 1, p. 11). The "I. T. I. O." owns about one-third of all the wells in the Oklahoma City pool and has the largest potential production of any company there (R. Vol. I, part 2, p. 263). Joe Sidwell is connected with the Prairie Oil & Gas Company which has production in both areas, although its largest potential production is in the Seminole *(ibid,* p. 284). The "Prairie" has a pipe line capacity of 110,000 barrels in the Seminole area and of 45,000 to 50,000 barrels in the Oklahoma City pool (R. Vol. II, part 1, p. 11). However, the Prairie Oil & Gas Company had discontinued entirely the purchase of oil at some time prior to the hearing below in June, 1931 (R. Vol. I, part 2, p. 297). R. M. Young is the president of The Carter Oil Company, a subsidiary of the Standard Oil Company of New Jersey, and the Carter has production in the Greater Seminole area but none in the Oklahoma City pool *(ibid,* p. 281). The Oklahoma Pipe Line Company, a purchasing company, and a subsidiary of the Standard Oil Company of New Jersey, has a pipe line capacity of 80,000 barrels per day in the Seminole area and of 20,000 barrels per day in the Oklahoma City pool (R. Vol. II, part 1, p. 11). Wirt Franklin is president of the Wirt Franklin Company and is inter-

ested as a stockholder in the Cromwell-Franklin Company (R. Vol. I, part 2, p. 269). Said companies have a very large potential production in the Oklahoma City pool, but none whatever in the Seminole area *(ibid,* p. 337). Neither of said companies is a purchaser of oil. Mr. Filley is connected with The Texas Company which has production in the Seminole area, but none in the Oklahoma City pool *(ibid,* p. 284). The "Texas" has a pipe line capacity of 24,000 barrels per day in the Seminole area, but none in the Oklahoma City pool (R. Vol. II, part 1, p. 11). Mr. Nicholas is with the Continental Oil Company of Ponca City which has production in both areas *(ibid,* pp. 8 and 13; Vol. I, part 2, p. 337). Said company has no pipe line in the Seminole area but has a pipe line capacity of 25,000 barrels in the Oklahoma City pool (R. Vol. II, part 1, p. 11). H. B. Fell of Ardmore, who is not connected with any company but is a so-called "independent oil producer," as a member of the committee represents the Southern Oklahoma producers (R. Vol. I, part 2, p. 283), that is, producers in the pools in southern Oklahoma which do not include any pool in the Greater Seminole area nor the Oklahoma City pool, both of which are, generally speaking, in the central part of the state. It does not appear in the record whether he is interested in production in either of these areas.

This committee, according to the witness Collins, "functions as a fact-finding and advisory committee, finding the facts, showing the potential production and the demand for crude oil in the State of Oklahoma, * * * and they make recommendations to the operators in the pools, 'over in the Seminole and other parts of the state'; * * *" (R. Vol. I,

Pt. 2, p. 283), at general meetings of the operators called for the purpose of considering the amount of the market demand for oil from each of the areas which were subject, under the statute, to be prorated. Its sole sponsorship was an association of producers known as the Mid-Continent Oil & Gas Association. In the first instance, Umpire Collins (who was employed in 1926 by the operators at the instance of the then existing advisory committee to act as umpire in the Seminole area under voluntary proration, and who in 1927 was, by the Commission, appointed umpire for the Seminole area, and later, when in 1929 the Oklahoma City pool was also placed under proration, was appointed by the Commission as state-wide umpire), with the assistance of Mr. Mapes, statistician for the Mid-Continent Oil & Gas Association, made surveys to ascertain the amount of oil which the several purchasing companies intended to take from the different prorated areas during the next succeeding few months *(ibid,* p. 284), and he submitted the information thus procured to the operators and their various committees, and then when petitions were filed with the Commission for proration orders the same information was submitted under oath to the Commission. In January, 1931, the Commission adopted the practice of subpoenaeing representatives of purchasing companies to appear before it to give testimony as to the amounts of the intended purchases.

The Commission, in its various orders, so far as they have been introduced in evidence here, found as a fact from the evidence before it, that the producers and purchasers in the

several pools were consulted at meetings of all the producers and purchasers which were held, at which the factors affecting the allowable production in the several pools were considered, and that the schedule of allowable production in the several pools, as set out in the Commission's order, represents the concensus of opinion of the producers and purchasers as to the reasonableness of arrangement, necessity and convenience of producers and purchasers, and equity as between the various common sources of supply (Order 5189, June 30, 1930, R. Vol. II, part 2, page 93; Order 5369, October 28, 1930, *ibid*, 130; Order 5413, December 30, 1930, *ibid*, 167).

Thus, it appears not only that most of the companies with which the members of the state-wide committee are associated have very large producing interests in the Oklahoma City pool, but also that the committee in reality represents all of the producers of oil, and also that the producers, called "operators," considered the distribution which the purchasing companies made of the market outlets for the several areas, and that at meetings of said operators they acquiesced in such allocation of market outlets and regarded same as fair and equitable. These facts positively negative committee control of proration in the special interests of any company or companies with which committee members were connected having production in any of said areas; or the exercise of any supervision without regard to the welfare of the producers themselves, either large or small.

The undisputed testimony is that the amount of allow-

able production which the Commission found and fixed in its orders corresponded to the amount of the market demand for oil in each pool (R. Vol. I, part 2, p. 298; Finding XXVIII, *ibid* 209).

The drilling of new wells resulted in the potentials in the Oklahoma City pool increasing by leaps and bounds; and it appears without contradiction in the record that both the state-wide committee and Mr. Collins "attempted from time to time to induce the purchasing companies to buy more crude oil from the Oklahoma City field, and that they did give their promise that they would do so" (Finding XXVII, *ibid* 208). Also, that others made such efforts *(ibid* 293).

The Corporation Commission itself has made like efforts (Order 5434, Feb. 10, 1931, R. Vol. II, part 2, p. 204; see also, Order 5369, Oct. 28, 1930, R. *ibid,* pp. 132-33).

The co-operation of the producers of oil in the administration of the act in question is to be commended. As we have pointed out in discussing the conditions which obtained in 1914 and 1915, this law was passed to prevent waste and for the protection of the co-equal rights of all producers. The fact that said producers, for the protection of whose co-equal rights this law was enacted, not only take advantage of the existence of the law and desire to utilize it in the prevention of a recurrence of the deplorable conditions which obtained prior to its enactment, but also may actively seek its enforcement for said purpose, is certainly not to be condemned.

The Corporation Commission in making and entering the proration orders here in question acted at all times upon its own independent judgment. (See, Finding XXVIII, R. Vol. I, part 2, p. 209.) It made no orders without the reception of full testimony. Its general orders invariably recite this fact, and several of its special orders make particular mention of the fact that considerable testimony was received. Before conducting hearings, applications under section 6 of the act were filed with the Commission. For a long time these were filed by Wirt Franklin, who was not personally interested, directly or indirectly, in any well in the Seminole area (R. Vol. I, part 2, p. 337).

The orders, rules and regulations of the Commission were made and entered upon petitions filed by interested persons, after proper notice, and upon sufficient evidence, for the purpose of preventing waste and protecting the co-equal rights of the several owners of land over each pool (Finding XXX, *ibid* 210).

An abstract of a large volume of the testimony taken at the hearing which resulted in the order of October 28, 1930, was introduced in evidence in this case (R. Vol. II, part 4, pp. 315-363).

Thus, it appears that the functions of the so-called "State-wide Committee" were purely unofficial, voluntary and advisory, and it was not invested with, nor did it assume, any powers. *

Under the heading "No discrimination against the Oklahoma City pool," we recite additional facts bearing directly upon the question of alleged committee control.

* See Gorieb v. Fox, 274 U.S. 603
Miller v. Schoene, 276 U.S. 27

NO DISCRIMINATION AGAINST THE OKLAHOMA CITY POOL.

The trial court covered this question in its Finding XXVII (R. Vol. I, Pt. 2, pp. 207-208).

Yet at many places in plaintiff's brief, for example pages 18-19 and pages 89-90, counsel argue that the orders of the Commission have discriminated against the Oklahoma City pool in favor of the Greater Seminole area and the balance of the state. Frequently they have asserted that the Commission arbitrarily distributed and allocated the market demand for oil in the state among and in the various pools "to suit itself" (p. 111) or under the domination and to accommodate the interests of certain operators (pp. 11-18). They compare the large potentials in the Oklahoma City pool with the relatively smaller, though quite large, potentials in the Seminole and then those in the balance of the state, and then compare the amounts of the allowable productions in each of the several areas in an attempt to show that the result of the alleged arbitrary allotment of market outlets is unfair to the Oklahoma City field producers.

In 1930-1931 there were about 60,000 producing oil wells in the so-called "old settled pools" in the state, called in the orders "Class A" pools, which were producing very small quantities of oil per well per day (Order 5369, October 28, 1930, R. Vol. II, Pt. 2, p. 133; Order 5437, February 10, 1931, R. *ibid* 194), aggregating about 250,000 barrels per day *(ibid* 128), with a long established market demand for their full production *(ibid* 132). Most of these old pools had

been discovered before the act in question was passed (see Technical Paper 45, Bureau of Mines 1913, by Blatchley, pp. 20-43). The Greater Seminole area discovered at the cross roads of already existing major trunk pipe lines, contains eight or more distinct and separated pools, the first of which was discovered in 1925, now has 2441 producing oil wells with a potential capacity of 564,908 barrels per day (Finding VI, R. Vol. I, Pt. 2, p. 183), and a market demand for about 175,000 barrels per day. The Oklahoma City pool, about 65 miles west and somewhat north of the Seminole area, was discovered in December, 1928, and now has 746 producing oil wells with a total potential capacity of 2,987,993 barrels per day (when divided by three). (Finding VI, R. *ibid* 184; see, also Finding XIV, *ibid* 193), and a market demand of 185,000 barrels of oil per day.

Counsel (plaintiff's brief, p. 112) cite and quote a portion of the order of October 28, 1930 (R. Vol. II, Pt. 2, p. 132), as conclusive evidence that the Commission was arbitrarily allocating markets. But, counsel fail to explain that the quoted part of the order has reference only to Class A pools, which the Commission had never before prorated. The provision was (R. *ibid,* p. 142) that all leases in said pools having a potential production in excess of an average of 5 barrels per well per day should be curtailed 50% of the excess over 5 barrels per well per day average. They omit to quote the following pertinent portion of the order (R. *ibid,* p. 132):

> "In this connection, the Commission finds that a number of purchasing companies desire to and have already *reduced* the amount of their purchases in the

> so-called older pools in the state not heretofore prorated under order of this Commission, and that said purchasers *desire* to purchase a greater amount of oil in the Oklahoma City pool than they have heretofore taken. The Commission further finds that, by reason of the readjustment of purchases as herein stated as between pools not heretofore prorated and the Oklahoma City pool, the potential production of said pools not heretofore prorated will exceed the reasonable market demand therefrom, * * *" (Italics ours.)

The remainder of the sentence is quoted by counsel on page 112 of their brief.

Counsel's position and argument presupposes a power in the Commission to transfer markets from one pool to another; to effectively say to a purchaser that he or it shall purchase oil at the place and in the amount which the Commission may determine; and in fact it is asserted that the Commission has arbitrarily exercised this power. Then, apparently forgetting this necessary presupposition contained in the contention, and ignoring their argument elsewhere made, in effect that to avoid discrimination, the Commission should allocate markets among the fields in proportion to their respective potentials, they say (plaintiff's brief, p. 113) that the act

> "cannot validly authorize the Commission to take from one field any part of its market and assign or shift it to another and that if the act is capable of that construction it violates the Fourteenth Amendment in that it takes from one or more operators in a given field their business without any corresponding advantage, and gives it to another."

The contention that there has been discrimination overlooks the basis of the classification (see, *Lindsley* v. *Natural Carbonic Gas Co., supra*) of the several prorated areas which was adopted by the Commission, and the only basis, so it seems to us, which it could have adopted.

There is a criterion or standard fixed by section 4 of the act which alone must be applied in order to determine whether any pool has been discriminated against. It is the ratio between the potential production of the pool and the amount of oil that can be produced therefrom without waste.

The Commission in several of its orders declared this to be the standard which it adopted (*e.g.*, Order No. 5369, October 28, 1930, R. Vol. II, Pt. 2, pp. 130-131), thus demonstrating that it had a correct conception of its authority and duties under section 4.

The trial court's Finding XXVII (R. Vol. I, Pt. 2, pp. 207-208) is that there was no such discrimination as is alleged, and also that

> "the basis upon which the Commission classified the different prorated pools for the application of the varying percentages of allowable production therein as shown by its several orders was the existing relation between the potential production of each pool and the amount of crude oil which could be produced therefrom without waste. * * * Said relation was not the same in all the prorated pools and therefore the percentages of curtailment necessarily varied as between pools."

The court there found, as did the Commission in its various orders, that the pools were not all served in com-

mon by the same pipe lines and purchasers; also that the reasonable market demand for certain of the pools was greater in proportion to the potential production thereof than in the case of others; that some of them were older than others and had been prorated longer than others; that in some of the pools there are purchasers whose local facilities are not extended to others and that in some of the pools there has been more intensive drilling and wells of larger capacity have been brought in than in others.

Therein the court also found that the Commission had ascertained and recognized the reasonable market outlet for each of the pools and that having done so no unfair discrimination as between pools resulted.

Indeed, the Commission would have made an unreasonable order if it had placed all of the pools upon the same percentage basis.

In view of the facts recited above it is no surprise that the Oklahoma City field has had difficulty in developing a larger market and in increasing its market outlet from time to time. The Seminole area is still a very prolific producing area with approximately 200,000,000 barrels yet to be recovered (R. Vol. I, Pt. 2, p. 343). The old settled fields have and will produce oil for a long time although very small amounts per well per day. Buyers of crude oil had their investments in pipe lines and tankage incident to their connections made with these old settled pools and the Seminole area before the Oklahoma City pool was discovered. Naturally the Oklahoma City field producers feel that since the potential production of the field is so tremendously large

as compared to the potential of the other fields in the state, the purchasers of crude oil should take more of their production than they do, and plaintiff made and introduced Exhibit No. 11 in an effort to emphasize this; but the facts which we have just recited cannot be disregarded by purchasers of oil and there may be much merit in their view that it is unreasonable to expect them to discontinue their takes from the old settled pools and in the Seminole area, which is considerably older than the Oklahoma City pool, in order merely to meet the desires of the Oklahoma City field producers. To do so would involve the discontinuance of the use in large measure of their present facilities in the older areas and at the same time involve large additional expenditures in increasing their facilities for taking additional Oklahoma City production, in the case of those now taking oil from said field; and would involve large initial expenditures attending the entry of said field for the first time by those not already connected therewith. Even so, they did at one time in the fall of 1930, reduce their takes from the old settled pools merely in order to be able to make some increase in their purchases at Oklahoma City. (Order 5369, October 28, 1930, R. Vol. II, Pt. 2, p. 132.) This merely presents the picture from the standpoint of the purchasing companies as we understand it, and with which, in point of fact, the issues in this case have nothing to do. We present them for the information of the court, primarily for the purpose of showing that there are two sides to the question as to whether or not the purchasing companies (not the Commission) have discriminated against the Oklahoma City field. The day will come, as it has always done in the case of every

newly-discovered field, when the Oklahoma City field will reach the settled production class, and then still later the so-called stripper class; and no doubt when that day arrives, there will be other new flush fields within the state with large potential production. When that day shall come, it is likely that the plaintiff will be on the other side of this question, for it will then want the new pools held down. It will doubtless feel that new pools should not interfere with the markets of the old pools.

The plaintiff has not introduced any testimony whatsoever to show that the amount of the market demand for crude oil in the Oklahoma City field has at any time been any larger than the amount found and fixed by the Commission. It must, therefore, be accepted as true that the Commission's conclusion on that subject is correct. Collins testified that it was, and the trial court so found.

As we have remarked, and as plaintiff's counsel declare, the Commission has no power to require any purchasing company to buy oil in a field where it does not desire to purchase any, or to increase its takes from any field wherein it is making purchases. We doubt if the State of Oklahoma could lawfully require things of that sort to be done.

The power of the Commission to prevent unreasonable discrimination between pools is the power to classify the fields where such discrimination should be prevented.

Such a classification by the Commission does not offend against the equal protection clause of the Constitution, and a court is not to strike it down *if any state of facts reason-*

ably can be conceived that will sustain it. The governing rule is stated in the case of *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61, 55 L. ed. 369.

The comparisons which plaintiff makes between potentials and allowables furnish no suggestion in view of the existing conditions recited above, of a reasonable basis for classification of the pools, for they take into account only one of a large number of facts and circumstances which must be considered, thus limiting the exercise of the discretion to a consideration of it alone, whereas, when all the facts and circumstances are considered as they necessarily must be, it appears that the isolated one selected by the plaintiff has the least probative force of any of them, and if adopted, would necessarily result in an arbitrary classification.

The comparisons which counsel make are superficial and deceptive.

Comparisons similar to those made by the plaintiff, even without a consideration of the more vital factors above set forth, at once disclose that the percentage of allowable production in the Oklahoma City pool is not, under the circumstances, unfair to the producers therein.

The percentage of allowable production for the Oklahoma City field, to-wit, 2% or 6% (depending upon how the potential for the field is arrived at) is larger than the percentage of allowable production in the Yates pool in West Texas, namely 1.3%. It compares favorably with the percentage of production in the Hobbs pool in New Mexico, namely, 3%, which is prorated by agreement of the pro-

ducers with the consent of state authorities. The Yates pool had a potential production of 5,496,000 barrels and a market outlet of 70,000 barrels per day. The Hobbs pool had a potential of about 1,325,000 barrels and a market outlet of 37,000 barrels a day (Stalcup, R. Vol. I, Pt. 2, pp. 359-361).

The Oklahoma City field in barrels of oil produced per day, namely, 185,000 or more barrels, is not exceeded by any pool in the United States. It is enjoying the largest market outlet of them all. It produces each day more than any other single pool in the United States. The East Texas area produces about 320,000 barrels per day, but it is composed of three separate and distinct pools, no one of which produces as much per day as the Oklahoma City pool (R., *ibid*, 359).

The wells in the Oklahoma City field under their allowed production average about 250 barrels per day, whereas, the wells in the Greater Seminole area average about 50 barrels per day. (McWilliams, R., *ibid*, 344.) In other words, each of the Oklahoma City field wells produces about five times as much per day as each of the wells in the Greater Seminole area.

The oil yet to be recovered in the Oklahoma City field is estimated at 260,000,000 barrels and that yet to be recovered in the Greater Seminole area is estimated at 200,000,000 barrels. The present market outlet for the Oklahoma City field is approximately 185,000 barrels which increased to about 200,000 barrels shortly before this case was tried, and the present market outlet for the Greater Seminole area is approximately 175,000 barrels per day.

If the two fields should continue from now on to produce said amounts, *respectively*, then the two fields would recover the amounts of recoverable oil therein respectively, within approximately the same period of time (R., *ibid*, 343-344).

The foregoing comparisons demonstrate that in coming to a conclusion as to whether the Oklahoma City field has been discriminated against, one cannot rely, as plaintiff does, upon a comparison of the cold percentage figures, to-wit, 2% or 6%, as the case may be, in the Oklahoma City field, and 50% in several of the pools of the Greater Seminole area. If one desires to form an opinion from looking at cold figures rather than to investigate the reasons for and the conditions which require the particular allowance which is given to the Oklahoma City field, then it would be better and more logical to look not to the percentage figures, but to the production per well per day figures and the figures showing the actual production in the various oil fields of the United States, respectively, and to compare them.

DISCRETION VALIDLY VESTED IN COMMISSION.

The authority conferred upon the Commission was not an invalid delegation of legislative power contrary to section 1, article 4, and section 1, article 5 of the Constitution of the State of Oklahoma.

—*C. C. Julian Oil & Royalties Co.* v. *Capshaw*, 145 Okl. 247, 292 Pac. 841 (syl. 2);

Quinton Relief Oil & Gas Co. v. *Corporation Commission*, 101 Okl. 164, 224 Pac. 156 (syl. 3);

United States v. *Grimaud*, 220 U. S. 506;
Marshall Field & Co. v. *Clark*, 143 U. S. 694;
Jacobsen v. *Massachusetts*, 197 U. S. 11;
Miller v. *Schoene*, 276 U. S. 272;
Plymouth Coal Co. v. *Pennsylvania*, *supra*.

GAUGES AND POTENTIALS.

The making of regulations by the Commission for the gauging of wells is merely a procedural step in the execution of the law and it necessarily involves the exercise of some degree of discretion by the Commission; and the method prescribed by the Commission is not only reasonable but is the most practical one available.

(a) *The statute, and authority of the Commission.*

Section 5 of the statute does not require that the Commission shall itself nor that any agent or representative of the Commission shall personally take or witness the gauging of the wells. This section reads as follows:

> "That for the purpose of determining such production, a gauge of each well shall be taken under rules and regulations to be prescribed by the Corporation Commission, and said Commission is authorized and directed to make and promulgate, by proper order, such other rules and regulations, and to employ and appoint such agents with the consent of the governor, as may be necessary to enforce this act."

It is the obvious purpose of the gauging provision of section 5 to carry the ratable taking provisions of section 4 into execution.

The legislature realized that conditions in the various oil pools of the state would no doubt be such that a fixed and stereotyped method which it might prescribe for the gauging of wells would not in many instances be of practical application. *Gorieb* v. *Fox,* 274 U. S. 603, 607, 71 L. ed. 1228, 1230; *Plymouth Coal Co.* v. *Pennsylvania,* presently to be quoted in part. This is well illustrated in the case of the wells in the Oklahoma City pool. The wells in the Seminole pool have been gauged by allowing them to flow wide open for twenty-four consecutive hours and the production run into lease storage tanks, and at the end of the time, the amount of oil produced during the time, as contained in the tanks, was measured or gauged, and thus the potential capacity of the well, that is, the amount of oil it was capable of producing within a 24-hour period, was determined; but in the Oklahoma City pool the wells produce such large quantities of oil, many individual wells being capable of producing in excess of 50,000 barrels per day, that it was impracticable, if not impossible, to operate them wide open for twenty-four consecutive hours. (See Finding XXV, R. Vol I, Pt. 2, pp. 200, 204.) In order 5437, February 10, 1931, the Commission found that it was "a physical impossibility" to flow all of them wide open for 24 consecutive hours because of inability to find storage for the oil. (Finding XIV, *ibid,* p. 193.)

So, in order, to gauge the wells in said pool, the Commission adopted a rule to the effect that each well should be permitted to flow wide open for a period of four consecutive hours and that the amount of production had during

said period should be multiplied by six to extend it to a 24-hour basis. In the industry this is regarded as a proper way to gauge a well (Clifton, R. Vol. I, Pt. 2, p. 262).

In one respect, the legislature imposed no discretion in the Commission, for it affirmatively required (Sec. 5, quoted above) that a gauge of each well shall be taken. But, it left to the discretion of the Commission authority to prescribe the time and manner of taking such gauges and *by whom they should be taken.*

In *Plymouth Coal Company v. Pennsylvania,* 232 U. S. 531, 58 L. ed. 713, which involved the constitutional validity of the Pennsylvania statute relating to leaving pillars of coal along the lines of adjoining properties, the court said:

> "The legislature has not defined with precision the width of the pillar, and it is very properly admitted that, in the nature of things, this would have been impossible because the width necessary in each case must be determined with reference to the situation of the particular property. From this it necessarily results that it was competent for the legislature to lay down a general rule, and then establish an administrative tribunal with authority to fix the precise width or thickness of pillar that will suit the necessities of the particular situation, and constitute a compliance with the general rule."

(b) ***The gauging regulations and their operation.***

The objections which plaintiff makes to the gauging of wells and the determination of potentials are as this court in the *Plymouth Coal Company* case said, "hypothetical rather

than practical." (232 U. S. 544, 58 L. ed. 719.) This will appear from what we shall say.

The statement in plaintiff's brief (pp. 90-95), of the regulations of the Commission on the subject of gauging wells is quite incomplete, and in many respects is inaccurate and misleading. We respectfully refer the court to the trial court's Finding XXV (R. Vol. I, Pt. 2, pp. 200-205), where the regulations and the practices thereunder are fully described. See, also, Findings XIII and XIV *(ibid,* pp. 192-194).

As we elsewhere show, the regulations which the Commission prescribed, including those relating to gauging, were in all cases made after notice to all parties concerned, and a hearing duly had at which interested persons were given every opportunity to be heard. The plaintiff, therefore, had notice and an opportunity to be heard in the framing of the gauging regulations.

The so-called "percentage basis of proration" has obtained in every prorated pool except the Oklahoma City pool, and it has obtained in the Oklahoma City pool since January 3, 1931. Prior to that date, the Oklahoma City pool was prorated on what was known as the "time basis." The "percentage of potential basis" consists of permitting every well to produce a percentage of its capacity to produce as theretofore established by a gauge of such capacity. The "time basis" of proration consisted in allowing each well to produce wide open for only a certain percentage of the time in a given period (Finding XXV). In applying the time method in the Oklahoma City pool prior to

January 3, 1931, all the wells in the pool were grouped into classes and all the wells of one class were allowed to be operated wide open at the same time and for the same length of time, and then they were closed-in completely until each and every other group of wells had been operated in like manner for a like period of time. Each method resulted in the production daily of the total amount of the per day allowable production for the pool and was intended to and did place every operator upon an equal or ratable basis.

These regulations were reasonable (Finding XXV).

Gaugings in the several pools were conducted in accordance with the prescribed regulations (Finding XXV).

Prior to December 30, 1930, some operators in the Oklahoma City pool petitioned the Commission to enter an order changing the operation of said pool from the "time basis" to the "percentage of potential basis," and after a full hearing, this petition was granted (Finding XXV; Order 5414, December 30, 1930, R. Vol. II, Pt. 2, pp. 180-190). The Commission had previously considered this question (Order 5396, December 4, 1930, R. Vol. II, Pt. 2, p. 154).

The Commission, in effecting said change by said Order 5414, found it necessary to take into consideration the relative positions in respect of ratable production of the several wells in the Oklahoma City pool as they existed at the date said order took effect, that is, January 3, 1931, by reason of the fact that they had been operated prior to that date according to the time basis; and to also take into account the fact that some wells were already somewhat

under-produced and others somewhat over-produced (conditions which were inevitable under either plan of proration). We deem it unnecessary to deal with the particulars of the manner and method in which the Commission solved these difficult problems with the view of working out a plan which would place each operator upon an equal basis as nearly as practicable. The order sets forth these details.

The testimony shows that the umpire multiplied by six the amount of oil shown to have been produced in the 4-hour open-flow period of each well gauged, thus extending the gauge to a 24-hour basis (Cosan, R. Vol. I, Pt. 2, p. 304). How these were reported to all the producers (once each month) is shown in plaintiff's Exhibit 24 (R. Vol. II, Pt. 1, pp. 37-78).

It was said by some that the potential of the Oklahoma City pool was "exaggerated" (Collins, R. Vol. I, Pt. 2, pp. 290-291). The extremely large producing capacities of the wells in said pools and their high gas pressures and the fact that the field has at all times been in a highly flush stage of production, not yet having reached a so-called "semi-flush" stage, resulted in the practical impossibility of providing sufficient storage facilities for the production which would result if in taking the gauges all of the wells were flowed at full capacity for any considerable length of time. It was believed that if it had been possible as a practical matter to flow the wells continuously for twenty-four hours, their production during the last few hours of the period would be at the rate of about one-third of their production during the first four hours of the period. (R. Vol. I, Pt. 2, pp. 261-

263, 266-267, 291, 345; R. Vol. II, Pt. 2, pp. 201-202.) Out of this grew the issuance of the Commission's "revised formula" (Finding XIV, R. Vol. I; Pt. 2, pp. 193-194), which provided that the potentials as shown by the 4-hour gauge multiplied by six should be divided by three (R. Vol. II, Pt. 2, pp. 204, 205, 206). The potential on February 10, 1931, the date of the order, was thus determined to be 2,000,000 barrels instead of something over 6,000,000 barrels, and the percentage of allowable production was fixed at 6-1/4 per cent instead of 2.08 per cent (R. *ibid,* p. 204). There is not much difference between this and the estimation which, though criticizing the formula, the plaintiff's geologist made (R. Vol. I, Pt. 2, pp. 264-266). The trial court found (R. *ibid* 204) that the revised formula as well as the potential plan prescribed by the Commission for use in the other areas,

> "arrived at approximately accurate results; that the orders of the Commission fixed the allowable of every producing well in the Oklahoma City field at the same relative proportions of their respective potentials, and that said orders did likewise in every other prorated field; that there has been a substantial compliance with section 5 of the Oil Conservation Act; and that no discrimination between producing wells resulted from the methods by which the potentials were determined; * * *."

On page 92 of plaintiff's brief, an order of November 8, 1930 (Order 5387, R. Vol. II, Pt. 2, pp. 151-154), is referred to in such language as to indicate that it might apply to the Seminole and Oklahoma City areas, and counsel there quote a provision of the order with reference to the power

of the umpire and operators' committee to exempt certain wells from the operation of the order. The fact is that said order does not deal with gauges. It is an order applicable exclusively to certain old settled pools located in certain counties in southern Oklahoma, where the wells were producing very small amounts of oil per day.

On page 93 of plaintiff's brief, an incorrect statement is made with reference to an order of December 4, 1930 (Order 5396, R. Vol. II, Pt. 2, pp. 154-159), entered while time proration obtained in the Oklahoma City pool. After saying that each operator in the Oklahoma City pool shall be allowed to produce four (4) hours continuously, counsel say "and thereafter required to shut in his wells for 65 days, and for longer than that if he got more than his proportion of the oil, *according to his unofficial report,* not according to the report of any sworn official of the state." The italicized words are italicized in plaintiff's brief. The erroneous statement we call attention to is the statement, "and thereafter required to shut in his wells for 65 days." Said order does not say anything with reference to shutting in wells for sixty-five days.

Said Order 5369 is an order which, *first,* requires something that was later repeated in Order 5414, namely, that each producer in the pool shall each day file with the Commission a verified written statement with reference to the operation of each of his or its wells during the 24-hour period ending at 7 o'clock a. m. of the day the report is to be filed, and containing certain detailed information with reference to the production from the well, how long it has been on production, etc., and *second,* directing that in computing

the 4-hour period (it was a time proration period) of production allowed by Order 5374, dated November 3, 1930 (R. Vol. II, Pt. 2, pp. 146-150), the 4-hour flow shall be taken continuously and not intermittently, and shall be computed from the hour and minute that oil produced from the well shall first reach the oil and gas separator.' The order then deals with under-produced wells and the making up of their under-production. It is a mere coincidence that at said time and under time proration, each well was allowed to produce for a period of four hours, thus agreeing with the length of time which, after January 3, 1931, the wells in said pool were to be produced wide open in determining their potential capacities for operation on the percentage basis. The 65-day shut-in requirement applied only to wells newly brought in (see Sec. 7 of Order 5413, December 30, 1930, R. Vol. II, Pt. 2, pp. 173-174), and it was never applied to any well after the sixty-five days expired.

(c) ***Plaintiff is not entitled to injunctive relief against the enforcement of the gauging regulations.***

The proration statute being valid, and the Commission having been validly invested with authority to enforce it, including authority to prescribe regulations for the gauging of wells, the following rule announced by this court, speaking through the late Chief Justice WHITE in the case of *Red "C" Oil Manufacturing Company* v. *Board of Agriculture,* 222 U. S. 380, 394-395, 56 L. ed. 240, 246, precludes the plaintiff, even if the criticisms it levels against the method of gauging were well taken, from a right to in-

junctive relief at the hands of the court and relegates it, if it is entitled to relief at all, to the Commission:

> "We have not attempted to enumerate the objections urged against the rules and regulations adopted by the board of agriculture (for the enforcement of the North Carolina oil inspection statute). The court below was clearly right when it observed that if, as the complainant alleged, the standard of safety fixed by the board was unreasonably high, and the method of testing oil unsatisfactory, and not such as was in general use, or the regulations in other respects were unjust or oppressive, it should seek relief by applying to the board of agriculture to modify them. A law cannot be declared invalid because, in the opinion of the court, it does not accord with sound policy. The plea for redress in such case must be to the lawmaking power."

This is an application of the same principle which this court, as we elsewhere show, has repeatedly announced shall be applied when a court is passing judgment upon the validity of a particular police regulation, within the scope of legislative authority, namely, that the scope of judicial inquiry in deciding questions of power is not to be confused with the scope of legislative consideration in dealing with the matter of policy, and that whether the enactment is wise or unwise, whether it is the best means to achieve the desired result, or whether the legislative discretion within prescribed limits should be exercised in a particular manner, are matters for the judgment of the legislature, and with the exercise of its discretion in those regards, the courts will not interfere.

(d) *Plaintiff has not shown that it has been injured by the method by which the wells have been gauged.*

The plaintiff in this case has neither alleged nor shown by evidence that there has been any irregularity in the actual gauging of any well, nor that the method by which the wells are being gauged fails to result in the ability of the plaintiff to produce its ratable share of the oil production in the pool where its wells are located, nor (assuming the statute in other respects is valid) that it has been injured in any respect by the particular method which the Commission has prescribed for taking the gauges.

The trial court found (Finding XXV, R. Vol. I, Pt. 2, p. 204) that "there is no evidence showing or tending to show that any frauds were practiced or favoritism shown in connection therewith"; and "that no discrimination resulted as between producing wells."

Unless and until a party shows that he is injured by the operation of a law or a regulation within the law, he is not permitted to challenge the constitutional validity thereof. He must show that an unconstitutional feature thereof injures him.

—*Plymouth Coal Co.* v. *Pennsylvania*, 232 U. S. 531, 544-545, 58 L. ed. 713, 719.

The mere possibility of injury is not sufficient.

It follows that even if it be unlawful for wells to be gauged by unofficial persons, or the Commission may have unlawfully attempted to delegate power and discretion in oil operators to take the gauges, or it were a dangerous practice to permit umpires paid by the producers to super-

vise the gauging (questions hereinafter discussed under the headings "Umpires and Operators' Committees" and "The Salaries of the Umpires") nevertheless, inasmuch as the plaintiff has not shown that it has been injured in any respect or that ratable taking has not resulted, it is in no position to question the constitutional validity of this feature of the administration of the law.

However, if, for some reason not observed by us, we are in error herein, then we respectfully submit the following points and argument in response to plaintiff's various contentions.

(e) *A gauging by the owner-operator witnessed by another operator is not invalid.*

By the regulations (see Finding XXV) a well must be gauged by its owner, or if a corporation, a representative of the owner; and the taking of the gauge must be witnessed by a representative of the owner of an adjoining lease, such representative to be appointed by the umpire. When the gauge is made, the owner or his representative and the representative appointed by the umpire must file a written report thereof with the umpire, and in the case of wells in the Oklahoma City pool, the report must be verified and filed with the Commission and a copy thereof with the umpire.

This method of gauging the wells does not constitute the gauging thereof by "private persons" in the sense in which plaintiff contends, but rather the disinterested witness (Finding XXV) appointed by the umpire, represents not only himself but also all other producers.

The gauging of a well is a ministerial act. It requires, it is true, an exercise of mental faculties just as any ministerial act does. But the time of the flow, the fact of the flow, and the quantity of the flow of oil are the only things to be seen and known by the operator and the witness; then, they are to record and report them. Beyond the doing thereof, they have no function to perform.

No one is better qualified to gauge the wells than the operators themselves, experienced as they are in the operation of oil wells.

None of the authorities which are cited by counsel for the plaintiff (plaintiff's brief, pp. 101-102), seems to us to be in point in support of the contention that it is illegal for the gauges to be taken and witnessed in the manner prescribed. We discuss but two of them, the cases of *Washington, etc.*, v. *Roberge*, 278 U. S. 116, 73 L. ed. 210, and *Eubank* v. *Richmond*, 226 U. S. 137, 57 L. ed. 156.

In the *Roberge* case, the court held that:

> "The section (of the zoning ordinance thereir involved) purports to give the owners of less than one-half the land within 400 feet of the proposed building authority—*uncontrolled by any standard or rule prescribed by legislative action*—to prevent the trustee from using its land for the proposed building. The superintendent is bound by the decision or inaction of such owners. *There is no provision for review under the ordinance;* their failure to give consent is final. They are not bound by any official duty, but are free to withhold consent for selfish reasons or arbitrarily, and may subject the trustee to their will or caprice. * * * The delegation of power so attempted is repugnant to

the due process clause of the 14th Amendment." (Italics ours.)

In the *Eubank* case, a city ordinance was struck down because it empowered two-thirds of the property owners in a block to determine the extent of the use which all owners in the block should make of the frontage of the properties within the block and required the committee on streets to act accordingly, leaving no discretion in the committee.

It is not so here. Neither the operator who is gauging his own property, nor the appointed representative of some other operator who is to witness the gauge, determines whether the well shall be gauged; the law requires that, and so does the Commission. Neither determines how it shall be gauged; the Commission defines that. They simply open the well, allow it to flow, and measure and report its production.

Section 6 of the act expressly provides that any person, firm or corporation may apply for a hearing before the Commission "upon any question relating to the enforcement of this act, and jurisdiction is hereby conferred upon said Commission to hear and determine the same."

The orders of the Commission without exception reserve jurisdiction in the Commission to make and enter ancillary orders from time to time. Order 5413, December 30, 1930, contains the following provision:

"Attention of the producers in each pool is hereby directed to section 7959, Compiled Oklahoma Statutes (section 6 of the act), which provides that any person, firm or corporation may institute proceedings before the Corporation Commission or apply for a hearing

upon any question relating to the enforcement of the conservation laws. In this connection, producers in each of the pools in Oklahoma are invited to appear before the Commission at any time that they may deem themselves peculiarly injured by the administration of this order in any particular or in any manner discriminated against, and the Commission will hear and act upon the evidence disclosed in such hearing. Notice shall be given to the Umpire and Operators Committee of the intention to thus appear before the Commission on any such question." (R. Vol. II, Pt. 2, p. 174.)

A written report of each and every gauge executed by the well owner's representative and the witness is required and is filed, in the case of Seminole area wells, in the umpire's office, and, in the case of the Oklahoma City pool wells, in the office of the Commission, and a copy in the umpire's office (Finding XXV). In the latter case it must be verified by both of them.

Additionally, in the case of Oklahoma City pool wells, a daily report required of each operator by Order 5414, December 30, 1930, results in the creation of potential and production records available to all producers. These daily reports must be under oath and must show for the preceding day the amount of the allowable production for the then current month, the overage or shortage in production for the preceding month in the case of each well of such operator, the net tentative allowable production for the current month, the production on the day for which the report is made, the balance remaining of the tentative allowable production for the current month, and as to each lease, the amount of oil shipped by pipe line or by tank car, with

the name of the pipe line or the railway company transporting the same, and the name and address of the purchaser of the oil so shipped (R. Vol. II, Pt. 2, p. 187).

In the Oklahoma City pool, obedient to an order of the Commission (R. Vol. II, Pt. 2, p. 188), the umpire prepares each month a long, detailed statement showing the status in respect of potentials, allowables, overages and underages of each and every well in the pool; and each producer therein is supplied with a copy thereof (Cosan, R. Vol. I, Pt. 2, p. 306). The plaintiff's Exhibit 24 (R. Vol. II, Pt. 1, pp. 37-78) is a copy of one of these monthly reports.

Thus, it appears that, not only did the law provide for hearings in the event of complaints in the administration of the law by the Commission, but also the orders of the Commission themselves provided for the creation of records available to each and every producer, from which any producer would be able to determine precisely what was going on in respect of the determination of potentials of all wells and of the production which might be had therefrom. A more comprehensive system, whereby producers are given an opportunity for information as to the status of each and every well on each and every day, and also an opportunity to be fully heard in the event of dissatisfaction or suspicion of, or of the actual occurrence of, improper conduct on the part of any other producer, could not well have been established.

When the system thus set forth is considered in the light of what is held in the *Roberge* case, and of what is said by this court in the *Plymouth Coal Company* case, it

is apparent that there is no analogy between the situation here and that which existed in the *Roberge* case, and that the rule of law there announced has no application. There is not here, as there was in that case, any delegation to private parties of power to determine the rights of any producers, but only a duty to witness and measure the amount of oil which a well produces within a certain number of hours, and the exercise of this duty was at all times subject to review by the Commission. No discretion, susceptible of capricious exercise, is vested in either the operator or in the representative of the umpire. There is no power in either to prescribe any rule or course of procedure, but only authority and instructions to follow a rule of procedure definitely laid down by the Commission.

As a practical matter this is the only system which could have been adopted. It would have been impossible, of course, for the members of the Commission to have observed the periodical gauging of each of the wells—more than 2,000 in the Seminole area and nearly 800 in the Oklahoma City pool. Unless an army of umpires or assistant umpires had been appointed, it would have been practically impossible for directly appointed agents or employees of the Commission to have done so. Serious complaint is made by plaintiff that the producers in the prorated areas have provided funds for the payment of the salaries and expenses of the umpires who have acted, and yet their position demands that a sufficient number of employees shall be selected and paid (not by producers, but by the public at large) to require the contribution of many times the amounts which have been contributed.

Inasmuch as the records which are required to be made fully disclose what was done in the way of gauging wells pursuant to the orders of the Commission, and said records were and are at all times available for the inspection of any producer who might choose to look at them, and inasmuch as ample provision was contained in both the law and the orders for complaints to be made before the Commission and hearings had thereupon, it seems to us that it cannot be said that any constitutional rights have been taken away by the system.

(f) *The supposed opportunity for fraud does not vitiate the system.*

Plaintiff contends in its brief that although it has made no complaint against the gauges of its wells, nevertheless, the amount of oil it is allowed to produce is made to depend upon the gauge of all the wells in the field, and that the opportunity for fraud in the arrangement which the Commission has set up is too great for frail humanity to overcome (plaintiff's brief, pp. 103-104).

This court, in the case of *Caminetti* v. *United States*, 242 U. S. 470, 490, 61 L. ed. 442, 445, in passing judgment upon a case arising under the White Slave Traffic Act of June 25, 1910, said:

> "The fact, if it be so, that the act as it is written opens the door to blackmailing operations upon a large scale, is no reason why the courts should refuse to enforce it according to its terms, if within the constitutional authority of Congress. Such considerations are more appropriately addressed to the legislative branch of the government, which alone had authority to enact

and may, if it sees fit, amend the law. *Lake County* v. *Rollins,* 130 U. S. 673, 32 L. ed. 1064, 9 Sup. Ct. Rep. 651."

So, we say here that if the rules and regulations authorized to be and which were prescribed by the Commission may afford opportunities for fraudulent conduct and practices on the part of producers, yet, being, as it is, within the constitutional power of the State of Oklahoma to authorize their promulgation, the opportunities mentioned furnish no basis for striking down the plan and system. The doors of the legislature of Oklahoma are open for its revision. If any officer did the gauging he too might be subject to influence, and the same objection might be made to a plan which so provided.

The Commission is empowered (Sec. 4) to "so regulate the taking * * * as to prevent the inequitable or unfair taking, from a common source of supply, * * * by any person, firm or corporation, * * *" and (Sec. 6) to hear complaints "upon any question relating to the enforcement of" the act.

Although the plaintiff undoubtedly received each month a copy of the umpire's monthly report, and has had access to all the other reports and records hereinabove mentioned, it does not appear that it ever applied to the Commission, making complaint as to the gauge of any well in the pool, or requesting that any well be re-gauged. Nor does it appear that there has been any general complaint respecting the taking of gauges, or any at all, that unfairness or injury has resulted, and the court (Finding XXV) found there was no evidence of any.

In a sense, every producer in a pool is policing the conduct of all other producers therein. It would be quite difficult for undetected fraud to be long practiced by any one or a few of them. Wells and tanks are not far apart, and there is constant commingling of well owners and their employees with other well owners and their employees. Every activity of any producer is easily discoverable by others. The determination, fixed and certain as it is, that no producer or group of producers shall gain any undue advantage over others in their production operations furnishes every assurance that any unfairness or dishonesty will be brought promptly to light and that the guilty parties will be speedily called upon to account for their conduct.

The statement of ex-Attorney General West (R. Vol. I, Pt. 2, p. 371), referred to on page 105 of plaintiff's brief, a statement made during the argument of the case below, that "*I think* the administration of this law by the umpires appointed by the oil companies is iniquitous," is not an "admission" as counsel assert, but merely an expression of opinion. Mr. West did not represent any defendant in this suit, nor speak their views, and his opinion is not justified or warranted by any fact or circumstance proven in this case, and is not supported by the trial court's findings.

UMPIRES AND OPERATORS' COMMITTEES.

There was no non-delegable authority vested in the umpires or operators' committees.

Finding XXVI (R. Vol. I, Pt. 2, p. 205) covers the appointment by the Commission of the umpires and an Oper-

ators' Committee for each separate prorated pool. (See the orders of appointment in R. Vol. II, Pt. 2, pp. 221-231.)

In the brief of the plaintiff (p. 74), plaintiff's counsel make the contention that the Commission had no authority to delegate to the umpires or to the umpires and the operators' committees any jurisdiction of a discretionary nature, and that, to the extent the rules and regulations undertake to do so they are void, and that, consequently, the Commission's rules vesting the umpires with jurisdiction over gauges and the amount of oil to be run by any operator are void.

Section 5 requires that each well shall be gauged although it does not designate who shall gauge them. It further provides that they shall be gauged under rules and regulations to be prescribed by the Commission. It then provides that the Commission is authorized and directed to employ or appoint such agents with the consent of the governor as may be necessary to enforce the act. This negatives the idea that there was any delegation of authority by the Commission to the umpire to conduct or supervise gauges, for the act itself when correctly interpreted is a legislative authorization in the agents of the Commission to perform ministerial duties incident to the taking of gauges. The particular duties are to be specified by the Commission, and that was done. The nature of the power and authority vested in them is ministerial. They are not authorized to prescibe any rules or regulations for the operation of the prorated areas, but are directed only to perform the duties which the regulations of the Commission assign to them.

Before we point out the particular authority which the Commission in fact vested in the umpires or the operators' committees, let us quote the governing rule as expressed by this court in the case of *Plymouth Coal Company* v. *Pennsylvania*, 232 U. S. 513, 542, 543, 58 L. ed. 718, 719, a passage from which we have already quoted. The Pennsylvania statute involved in that case provides among other things that a mine inspector for each anthracite coal region district should be appointed by the governor of the commonwealth upon the recommendation of a board of examiners composed of three reputable coal-miners and two reputable mining engineers, all to be selected by judges of the County Court, and that each inspector is to give his whole time and attention to the duties of his office, his duties being prescribed in general terms; and it required the owners of adjoining coal properties to cause boundary pillars of coal to be left of sufficient width to safeguard the employees of either mine in case the other should be abandoned and allowed to fill with water; but it did not specify the width of the pillar in any case, nor the method of fixing its width, save only that, as interpreted by the state court it committed the decision of those questions to a tribunal of experts, namely, the mine inspector for the district, and the engineers of the owner of the adjoining coal properties. Among other things, the court said:

> "The objections of plaintiff in error to the method of fixing the width of the barrier pillar are based upon the supposed uncertainty and want of uniformity in the membership of the statutory tribunal, and upon

the fact that the statute does not expressly provide for notice to the parties interested, that the procedure is not prescribed, and that there is no right of appeal.

"The legislature has not defined with precision the width of the pillar, and it is very properly admitted that, in the nature of things, this would have been impossible, because the width necessary in each case must be determined with reference to the situation of the particular property. From this it necessarily results that it was competent for the legislature to lay down a general rule, and then establish an administrative tribunal with authority to fix the precise width or thickness of pillar that will suit the necessities of the particular situation, and constitute a compliance with the general rule. *United States* v. *Grimaud*, 220 U. S. 506, 517-522, 55 L. ed. 563, 567-569, 31 Sup. Ct. Rep. 480. Administrative bodies with authority not essentially different are a recognized governmental institution. Commissions for the regulation of public service corporations are a familiar instance. *Interstate Commerce Commission* v. *Cincinnati, N. O. & T. P. R. Co.*, 167 U. S. 479, 495, 42 L. ed. 243, 251, 17 Sup. Ct. Rep. 896. And it has become entirely settled that powers and discretion of this character may be delegated to administrative bodies, or even to a single individual." (Citing cases.)

It seems clear to us that the powers and discretion vested in the umpires in this case are not as broad as those which by the Pennsylvania act were vested in the engineers of the adjoining mine owners.

It being lawful for powers and discretion of the character of those described in the Pennsylvania statute to be delegated to even a single individual, that is, authority to

ascertain when it was necessary to fix the width of a barrier pillar on the line between two mining properties and to determine the width thereof, it seems to us that it must be lawful to go no further than has been done here in vesting authority in the umpire or the umpire and operators' committees. If this act, which was lawfully adopted and which, to be of practical benefit, must be enforced, is to be carried into effective execution, then the 3000 oil wells in the Greater Seminole area and the Oklahoma City pool, must be periodically gauged and the potentials of each thereof determined and recorded and the amount of the market outlets from each of the large number of pools must from time to time be determined, and computations made as to the respective percentages of relationship between the two. The Commission itself could not personally perform these duties.

The Commission itself determined from the evidence received by it at the hearing the amounts of potential production of the several pools and likewise the amount of the market demand for oil produced in each thereof. But as a basis for the determination by the Commission of the amount of the potentials, the gauges of the wells were directed to be made. The method of making these gauges is substantially set forth by the trial court in its Finding XXV (R. Vol. I, Pt. 2, pp. 200-205), to which we respectfully refer.

Prior to the taking of any gauge the umpire shall appoint a representative of an operator owning a lease adjoining the particular property to be gauged and notify the owner-operator of such appointment. It provides

that the owner-operator shall gauge the well and that the appointed representative of an adjoining operator shall witness the same. The power and discretion vested in the umpire to designate the person who shall witness the gauge does not operate to substantially distinguish this case from the *Plymouth Coal Company* case, particularly in the light of the fact that the two representatives are required to report in writing the result of the gauge and the fact that any producer who may be at all affected by the gauge taken had the right under the provisions of section 6 of the statute as well as under the provisions of the orders themselves to apply to the Commission for a hearing.

Counsel make quotation (plaintiff's brief, pp. 75-80) of certain parts of some of the orders of the Commission. They engage in no discussion thereof nor do they point out, unless it be perhaps by italicizing certain parts of the quoted language, wherein objectionable discretion was vested in the umpire or umpire and operators' committees.

With reference to the quoted provisions to the effect that in certain cases the umpire and operators' committees are authorized to fix the rate of curtailment necessary in certain areas, or to exercise any degree of discretion with reference to the enforcement of the orders, we wish to call attention to the fact that if there was discretion it was a discretion closely-controlled by the Commission, a public body, as evidenced by the concluding provisions (R. Vol. II, Pt. 2, pp. 16-17) in Order 5369, October 28, 1930, and the concluding provisions (R. *ibid*, 179) of Order 5413, December 30, 1930.

The concluding provision of Order 5369 is in part that

"when in the judgment of the umpire or operators' committee any adjustment or fixing of percentages of well production as provided in the order shall be proper, or as any supplementary or ancillary order shall become necessary, the facts supporting the necessity therefor and the reasonableness thereof shall be reported to the Commission for approval, and no exceptions to these rules and regulations shall be allowed by the umpire or operators' committee, or shall any adjustment of percentage of well production become effective, unless approved by such ancillary order of this Commission."

The concluding part of Order 5413, which has been continued in effect from time to time by subsequent orders, is to the same effect.

With reference to the authority vested by the Commission in the umpire and the operator as to the potential of his well in the event the operator and the witness had disagreed thereupon, we point to the fact that the determination of the amount of the potential of a well, whether it be done by the operator and the witness or the operator and the umpire, involves merely a calculation as to the number of barrels produced during the test period after deducting sediment and water as mentioned in said regulation (R. Vol. II, Pt. 2, bottom of p. 184). The order provides that in event of such disagreement, that is a disagreement as to the amount of oil produced during the test period, "the well shall be shut in at the close of the test, and the matter referred to the umpire" (p. 185). So that the amount of oil produced during the test would not be supplemented by any additional production from the well but

would remain in the lease storage tanks undisturbed, and could be immediately examined and measured by the umpire, and the correct quantity ascertained by the umpire. If the operator did not accept the umpire's calculation as correct, then the matter was to be referred to the Commission for determination (p. 185).

The isolated portions of the orders which counsel quote are to be construed and interpreted in connection with all other related provisions of the orders, including those which we have referred to above, and when this is done, it seems clear to us that the discretion, if any, and the power which was vested in these agents of the Commission, were so completely hedged about and controlled by the superior supervisory authority and power of the Commission that they contained no possible legally objectionable elements.

The umpires are not public officers.

The so-called "umpires" are in fact mere employees or agents of the Commission. That these agents are called "umpires" does not clothe them with the authority of a public officer.

Counsel for the plaintiff do not explain upon what theory they regard the umpires as public officers. They simply assert that they are officers and then that the legislature has no power to delegate authority in the Commission to create the office of umpire and prescribe the qualifications and duties thereof (plaintiff's brief, p. 80). They then, proceeding upon the assumption that they are officers, point to certain provisions of the Oklahoma statute which require officers to subscribe to an oath before entering upon the duties

of their respective offices, and providing that any person executing the functions of a public office without having taken the required oath is guilty of a misdemeanor, etc. (plaintiff's brief, pp. 84-87).

The primary distinguishing characteristics between an officer of a state or a municipal subdivision thereof, and an employee thereof, are stated in the case of *Metcalf* v. *Mitchell,* 269 U. S. 514, 520, 70 L. ed. 384, 390-391, where it is said:

> "An office is a public station conferred by the appointment of government. The term implies the idea of tenure, duration, emolument and duties fixed by law. Where an office is created, the law usually fixes its incidents, including its term, its duties and its compensation. *U. S.* v. *Hartwell,* 6 Wall. 385, 18 L. ed. 830; *Hall* v. *Wisconsin,* 103 U. S. 5, 26 L. ed. 302. The term 'officer' is one inseparably connected with an office; but there was no office of sewage or water supply expert or sanitary engineer to which either of the plaintiffs was appointed. The contracts with them, although entered into by authority of law and prescribing their duties, could not operate to create an office or give plaintiffs the status of officers. *Auffmordt* v. *Hedden,* 137 U. S. 310, 34 L. ed. 674. There were lacking in each instance the essential elements of a public station, permanent in character, created by law, whose incidents and duties were prescribed by law. See, *U. S.* v. *Maurice,* 2 Brock. 96; *U. S.* v. *Germaine,* 99 U. S. 508, 25 L. ed. 482; *Adams* v. *Murphy,* 91 C. C. A. 272, 165 Fed. 304."

The umpires were not appointed for any particular term or period of time and are subject to removal at the will of the Commission; proration itself is a temporary

measure designed to prevent waste and protect co-equal rights only so long as conditions in the oil pools require its maintenance; and the duties performed by the umpires may be dispensed with at any time by the Commission, although proration itself may not yet have been discontinued.

There is no statute of the state to which counsel point, and we find none, which expressly or impliedly requires employees or agents of the Commission to subscribe to an oath of office.

THE SALARIES OF THE UMPIRES.

The payment by the operators of the salaries of the umpires is not against public policy and the validity of their acts is not affected thereby.

The head-note on page 81 of plaintiff's brief states that the salary of Umpire Collins and of Umpire Bradford are paid by the operators committees. This is an error. They are paid by a majority of the oil producers in the prorated areas (Finding XXVI, R. Vol. I, Pt. 2, p. 206).

Counsel open their argument in support of their contention that the payment of the salaries of the umpires by private oil operators is against public policy and vitiates all their alleged official acts, with an assertion that the umpires cannot serve two masters, and the implication that they favor the producers who pay their salaries.

The plaintiff offered no evidence whatever tending to show that the umpires favor the producers who contribute to the fund out of which their salaries were paid.

The court below found (Finding XXVI), where it comprehensively covered the facts with reference to the appointment of the umpires by the Commission with the approval of the Governor, the services they render, the necessity for their appointment, and the payment of their salaries by a majority of the operators, the failure of the legislature to make any appropriation for said purpose, and concluded with a finding as follows:

> "While this method of compensating agents of the Commission is calculated to breed suspicion and distrust and destroy the confidence in the integrity of the Commission, *the evidence does not establish that such agents and employees, of the Commission, have been guilty of favoritism or dishonesty,* or that the Commission has acted arbitrarily or discriminated in favor of the group paying such agents, or that the plaintiff has suffered any injury by reason thereof, and the court finds no basis in the evidence for striking down the orders by reason of this practice."

This finding is not challenged in the plaintiff's statement of the points upon which it relies on the appeal herein (R. Vol. I, Pt. 2, pp. 406-411).

The fund out of which the salaries and expenses of the umpires are paid is raised by contributions made by the operators; in the case of the Seminole area for the payment of the salary and expenses of State-wide Umpire Collins, and in the case of the Oklahoma City pool for the payment of the salary and expenses of Assistant Umpire Bradford. Collins serves all of the prorated areas other than the Oklahoma City pool, and Bradford serves only the latter. In each case, the great majority of the pro-

ducers contributed to the fund; all of the producers are privileged to do so; and the payments which are made are made prorata on the basis of the production of each contributor to the total production (Finding XXVI, p. 206).

The Seminole area fund is collected and disbursed by the Carter Oil Company, and the Oklahoma City pool fund by the Oklahoma City Producers Association, the members of which do the contributing; it is not collected by the umpires (Collins, R. Vol. I, Pt. 2, p. 304).

In view of the unchallenged finding of the trial court that the umpires, as agents of the Commission, acted honestly and without favoritism, it cannot be fairly inferred that they were serving any master other than their principal, the Commission.

The trial court found (Finding XXVI) that:

> "The appointment of such agents was necessary for the purpose of properly and effectively administering the act and the rules and regulations thereunder. The Commission did not have a sufficient number of regular employees to care for the extra work entailed by the administration of the rules and regulations. No appropriation was made by law for the payment of the services of agents appointed under section 5 of the act. * * *
>
> "The method of compensating the umpire and his assistants * * * has been at all times known to the Commission and Governor, and was a matter of general knowledge. During that time there have been two sessions of the Legislature of Oklahoma, one beginning in January, 1929, and the other in January, 1931. The practice was not prohibited by the legislature and no fund otherwise provided for the payment of such agents."

The court, in said finding, further found that:

> "The said Collins and Bradford devote all their time to the employment by the Commission."

The magnitude of the work of supervising proration, clearly disclosed by the record in this case, required the active supervision of a qualified agent. Naturally, under the circumstances, those operators having the most at stake were willing to contribute to the salaries of said agents, while some of those whose interests were small may have been willing to take advantage of the services of the agents without making any contributions toward the payment of their salaries. The testimony is that some of them were not financially able to contribute. (McLennon, R. Vol. I, Pt. 2, pp. 301, 304.)

In said finding the court further found that the members of the operators committees serve without compensation. The operators committees here referred to should not as we have already suggested, be confused with the State-wide Proration Committee referred to in plaintiff's brief, in the statement of the case, as "a committee," "general committee," and "general advisory committee" (plaintiff's brief, pp. 12-16). The State-wide Proration Committee was not appointed by the Commission.

A separate operators committee was selected and appointed by the Commission to serve in each separate prorated pool, and it was composed of either individual producers therein or representatives of producing companies therein. It is these operators committees which are referred to in the various orders of the Commission. Counsel are

in error on page 75 of their brief when they state that the appointment of operators committees was not approved by the Governor. (See, Journal Entry No. 1795, June 30, 1930, R. Vol. II, Pt. 2, pp. 221-224; No. 1822, October 28, 1930, *ibid* 224-228; and No. 1835, *ibid* 228-231.)

The appropriations which were made by the legislature in various acts beginning in 1917 and ending in 1931, mentioned on page 83 of plaintiff's brief, were made for the salaries and expenses of the Chief Oil and Gas Conservation Agent and his assistants and stenographers operating in the Oil and Gas Department created by the Act of February 16, 1917. It will be observed from the tabulation which counsel have made that the appropriations made in 1917, nine years before any pool in the Greater Seminole area was discovered, amounted to $135,000 and no subsequent appropriation has been as large as that one, and also that appropriations of substantial amounts were made in 1921, 1923 and 1925, all prior to the discovery of the Seminole pool; and also that the amounts of the appropriations made in 1927, 1929 and 1931 were not substantially different from those made in previous years. There are, in addition to the act here in question, a number of acts of the Oklahoma Legislature relating to the conservation of oil and gas. They deal with the casing of wells, the wasteful utilization of gas, such as the burning of flambeau lights, requiring natural gas encountered in any well to be shut in and confined in the well in order to prevent it from wasting by escape; permitting unnecessary leaks in gas lines, and requiring the plugging of abandoned wells, and particularly, an act relating to the inspection of gasoline, kerosene

and other products of crude oil sold for industrial or domestic uses, all of which are under the supervision of the Chief Oil and Gas Conservation Agent. (See, Ch. 68, entitled "Oil and Gas," Secs. 7889-8017, C. O. S. 1921.)

It is contended (plaintiff's brief, pp. 82-83) that the Act of February 16, 1917 (App. (f), plaintiff's brief, p. 193), repealed that portion of section 5 of the act in question authorizing the Commission to employ and appoint, with the consent of the governor, such agents as may be necessary to enforce the act. We think it clear that a mere reading of the 1917 Act demonstrates the error in this contention. Section 2 thereof affirmatively provides that:

> "All authority and duties *now conferred upon the Corporation Commission* or other departments of the state government in reference to the conservation of oil and gas and the drilling and operating oil and gas wells and the construction and regulation of oil and gas lines, are hereby conferred *exclusively* upon the Corporation Commission."

The said act unquestionably preserved the authority conferred upon the Commission by section 5 of the 1915 Act. Such has been the interpretation placed upon this law by those charged with the duty of administering it, and this is entitled to great weight.

The use of the words "other departments of the state government," contained in the above-quoted section 2 of the 1917 Act, is fully accounted for by what is said by the Supreme Court of Oklahoma in the case of *Love* v. *Boyle*, 72 Okl. 300, 180 Pac. 705, which involved the validity of the 1917 Act, since it transferred authority and duties previ-

ously belonging to the Chief Mine Inspector and his department to the Corporation Commission.

To sustain their contention that the payment of these salaries by the producers is contrary to public policy, counsel quote several sections of the statutes of Oklahoma relating to the salaries and compensation of *public officers*. They also quote section 1579 which provides that the provisions "of this article" which relate "to executive officers" apply in relation to administrative officers in the same manner as if administrative and executive officers were both mentioned together.

These umpires are not public officers and they are not executive officers. Nor are they administrative officers, for they are not officers at all but only agents or employees of the Corporation Commission.

If the public policy of Oklahoma in respect of a *matter of the particular kind here in question* is to be found, as counsel for plaintiff contend it is, in the statutory provisions relating to compensation of officers, then we find that *it is definitely the state policy that they may be paid by the parties to be benefited by the services they render.*

Thus section 5545, C. O. S. 1921, provides that railway companies are authorized and empowered *at their own expense to appoint and employ* policemen in certain cases; and it provides also that such policemen shall have the authority of sheriffs, constables and peace officers in regard to the arrest and apprehension of certain offenders.

Said section reads as follows:

"5545. *Railway Companies May Appoint Police.*

Railway companies organized under the laws of this state, or doing business within the state, are hereby authorized and empowered at their own expense to appoint and employ policemen at such stations or other places on the lines of their railroads within this state, as said companies may deem necessary for the protection of their property, and the preservation of order on their premises, and in and about their cars, depots, depot grounds, yards, buildings or other structures; and said policemen shall have power and authority to arrest, with or without warrant, any person or persons who shall commit any offense against the laws of this state, or the ordinances of any town, city or other municipality, when such offense shall have been committed upon the premises of said companies, or in and about their cars, depots, depot grounds, yards, buildings and other structures; and shall also have the authority of sheriffs, constables and peace officers in regard to the arrest and apprehension of any such offenders, in or about the premises or appurtenances aforesaid; but in case of the arrest by said policeman of any person without warrant, they shall forthwith take such offender before some justice of the peace or other magistrate having jurisdiction, and make complaint against said offender according to law. Nothing herein contained shall be construed as restricting the lawful rights, powers or privileges of any sheriff, constable, policeman or peace officer within their respective jurisdiction, and for the official acts of such policeman or policemen the railroad company making such appointment shall be held responsible to the same extent as for the acts of any of its general agents or employees."

Thus again, section 6342, C. O. S. 1921, which deals with the appointment by sheriffs of under-sheriffs and deputies,

provides for the appointment of a special deputy sheriff for each organized Anti-Horse Thief Association lodge in his county; and that such deputy sheriff shall be compensated out of the fees earned by him.

Thus again, section 104, C. O. S. 1921, provides that the salary and expenses of the State Fire Marshal (whose office is created by section 92, he to be appointed by the governor) shall be defrayed by the fire insurance companies doing business in this state. The insurance companies are by said section taxed in the amount of one-fourth of one per centum on the gross premium receipts of all insurance companies to raise a fund to pay said salary and expenses. The salary and expenses of Collins and Bradford are raised according to a plan substantially the same as that set forth in said section. The only difference is that the contributions made by producers are not to be paid into the state treasury but rather into the hands of one of the interested producers, or the association of producers, who in turn pays the salary and expenses of the umpire out of said fund.

Section 104 was amended in 1923, and, as amended, reads as follows:

> "104. *Expenses—How Defrayed—Insurance Tax.* The salary and expenses incurred by the State Fire Marshal in the performance of the duties imposed upon him by the provisions of this act shall be defrayed by the fire insurance companies doing business in this state, and a tax of one-fourth of one per centum on the gross premium receipts of all such companies, is hereby levied for this purpose to be collected in the month of February of each year, by the insurance commissioner, as other taxes on insurance companies are collected. The insurance commissioner shall keep a sepa-

rate account of all moneys received, and pay the same to the state treasurer and shall include the same in his report. The money so received into the state treasury shall be set aside and appropriated as a special fund in such amount as is sufficient to meet the salaries herein provided and to take care of the contingent expenses of the office of the State Fire Marshal. *Provided,* such contingent expenses shall not exceed the sum of Ten Thousand ($10,000.00) Dollars per annum, for which an appropriation is hereby made, *provided,* the surplus of said fund shall be covered annually into the General Revenue Fund of the state. The state shall not be liable in any manner for the salary of the said Fire Marshal, his assistants, deputies and other employees, or for the maintenance of the office of Fire Marshal, or any expenses incident thereto and the same shall be payable only from the special fund provided for in this section."

And, again, section 9798, C. O. S. 1921, provides that the county commissioners of any county may contract with any person known as a tax ferret to assist in the discovery of property not listed and assessed for taxation and to fix his compensation not to exceed fifteen per cent of the taxes recovered. This section reads as follows:

"9798. *Contract and Compensation for Discovery.* The board of county commissioners of any county in this state may contract with any person or persons to assist the proper officers of the county in the discovery of property not listed and assessed, as required by existing laws, and fix the compensation at not to exceed fifteen per cent of the taxes recovered under this article. Before listing and assessing the property discovered, the county treasurer shall give the person in whose name it is proposed to assess the same, ten days'

notice thereof by registered letter, addressed to him at his last known place of residence fixing the time and place when objections in writing to such proposed listing and assessment may be made. An appeal may be taken to the County Court from the final action of the treasurer within ten days, by giving notice thereof in writing and filing an appeal bond, as in cases appealed from the board of county commissioners to the District Court."

The "State Bar Act" is another instance. Lawyers must pay the expense of purifying the bar. This act was passed in 1929 and is contained in the Session Laws of 1929 as chapter 264. It constitutes an association known as "The State Bar," the members of which are to be all persons entitled to practice law in Oklahoma. A board of governors is provided for to consist of thirteen members, one member to be elected from each of nine geographic subdivisions of the state and four at large. The members of the bar nominate and elect the members of the board of governors. The expenses of maintaining and carrying on the work of the State Bar under this act are paid by the members of the bar who are members of "The State Bar." No one is allowed to practice law in the state unless he has obtained a certificate of membership in the State Bar; membership fee shall be $3.00, and section 42 provides that the annual membership fee shall be $5.00 and provides that the board of governors "shall have the power to increase such fee to a sum not exceeding $10.00." Section 28 provides that all fees paid under the act shall be paid to the state treasurer "and be placed in the state treasury in a separate and dis-

tinct fund to be known as 'The State Bar Fund'." Said section 28 then provides:

> "Money in said fund, or so much thereof as shall be necessary, shall be expended from time to time *in the payment of all necessary expenses incurred in effectuating the purpose of this act* upon warrants issued by the state auditor after the filing of proper vouchers or claims by the board of governors; *provided, however,* that no member of the board shall receive any other compensation than his necessary expenses connected with the performance of his duty as a member of the board." (Italics ours.)

Section 47 reads as follows:

> "It shall be the duty of the board of governors annually to have prepared a statement showing the total amount of receipts and expenditures of the State Bar for the 12 months preceding. Such statement shall be properly certified under oath by the president and treasurer to the chief justice of the Supreme Court of the State of Oklahoma."

Section 27 provides that the board of governors, subject to the laws of the state, shall have power to formulate and declare rules and regulations necessary or specified for the carrying out of the act; and section 29 provides that the rules and regulations adopted by the board when approved by the Supreme Court shall be binding upon all members of the bar, and that the willful breach of any of such rules shall be punished by suspension from the practice of law for a period not to exceed one year. Section 21 provides that:

> "*The board shall have the power and appoint such commissions, officers, and employees as it may deem*

necessary or proper, and fix and pay salaries and necessary expenses." (Italics ours.)

The State Bar Act sets up a plan whereby the members of the bar, they being the persons most vitally interested, are required to contribute to and maintain the expenses of the organization established by said act, which has as one of its primary purposes the protection of the public and of ethical members of the bar from unethical practices on the part of other members thereof. The cost of purifying the bar was thus cast in 1929 upon the members of the bar.

Thus it clearly appears that if we are to measure the legality of the plan of paying these umpires by an ascertainment of what the declared public policy of Oklahoma is in respect to the compensated officers or employees, either executive or administrative, then the conclusion is that said plan conforms to the declared public policy of the state in similar situations.

In addition to the foregoing, we find that the compensation of several officers of the state is paid, pursuant to statutory provision, by the collection of fees from the parties affected by the services they render.

This is true in the case of coroners. See sections 5884 and 5887, C. O. S. 1921. It is true in the case of "additional" deputy sheriffs appointed by the sheriff (in cases over and above appointments of lodge deputy sheriffs for each organized Anti-Horse Thief Association lodge, referred to above). See sections 6338, 6342 and 6343, C. O. S. 1921. This is true in the case of justices of the peace and constables. See sections 6432 to 6435, both inclusive, C. O. S.

1921. The compensation of the officers referred to in these cited sections consists solely of fees which they collect. Such fees are paid by the parties litigant, or in criminal cases by the complaining witness or the defendant, depending upon whether there has been a conviction, and, in certain events, a percentage thereof is paid by the county.

It is not an uncommon thing for the compensation of public officers to be made to depend on fees for services rendered or on commissions or monies officially passing through their hands. See, 22 Ruling Case Law, Public Officers, section 219. See, also, *United States* v. *Lawson,* 101 U. S. 11 Otto 164, 25 L. ed. 860; *United States* v. *McClean,* 95 U. S. 5 Otto 750, 24 L. ed. 579.

A somewhat analogous situation arose in *Montezuma Canal Company* v. *Smithville Canal Company,* 218 U. S. 371, 54 L. ed. 1074. In that case it was contended that the decree involved, appointing a water commissioner to distribute the water of a river among various irrigation canals according to adjudged priorities, *and making the parties liable pro rata for his salary,* transcended the bounds of judicial authority. The court rejected this contention and sustained the decree as valid. The fourth paragraph of the syllabus to the report of the case as contained in the Lawyers' Edition reads as follows:

> "4. The bounds of judicial authority are not transcended by the appointment by a court of a water commissioner charged with the duty of distributing the waters of a river among the various irrigation canals according to the adjudged priorities, and imposing upon the parties a *pro rata* liability for his salary."

In the opinion, the court pointed to the analogy between the decree and legislative enactments in some of the states where irrigation is practiced, to control and regulate the use of water for irrigating purposes, saying:

> "It would indeed seem that the decree was modeled upon legislative remedies provided for similar situations in other jurisdictions, as the decree and the remedies which it affords bear a peculiar resemblance to legislative provisions enacted in some of the states where irrigation is practiced, to control and regulate the use of water for irrigating purposes. See part 4, Weil's Water Rights in the Western States, pp. 590, *et seq.* The reason for the creation of statutory provisions of this and kindred character undoubtedly is, as said in *Farm Invest. Co.* v. *Carpenter*, 9 Wyo. 110, 50 L. R. A. 747, 87 Am. St. Rep. 918, 61 Pac. 258, 'to be found in the inability of the ordinary procedure and processes of the law to meet the necessities pertaining to the segregation by various individuals or companies of water from the same stream by separate ditches or canals, and at different points along its course, under rights by appropriations to so divert and use the water'."

Thus we have shown that the arrangement for the payment of the salaries and expenses of Collins and Bradford neither violates public policy generally nor the public policy of the State of Oklahoma.

Therefore, certainly, the things which they have done in the performance of their duties cannot be said to be vitiated or in anywise affected by the arrangement under which they are compensated.

It is neither alleged nor is there a scintilla of proof

introduced in this case to show that either Collins or Bradford has ever done anything, either legally or morally wrong, in connection with the performance of their duties. In point of fact their conduct is above reproach, and this is shown by the evidence.

Furthermore, what we have said at other places in this brief applies here, namely, that the plaintiff in this case can not raise the point that the salaries and expenses of the umpires are not legally payable by the producers, and this for the reason that the plaintiff has not been injured by anything either of them has done.

INTERSTATE COMMERCE.

(a) ***Commerce among the several states begins and the regulating power of Congress attaches and that of the state ceases, when the commodity or thing traded in commences its transportation from the state of its production or situs to some other state, and terminates when the transportation is completed and the property has become a part of the general mass of the property in the state of its destination.***

—*In re Green*, 52 Fed. 104, 112;

Hammer v. *Dagenhart*, 274 U. S. 251;

Ed Reid v. *People of the State of Colorado*, 187 U. S. 137.

(b) ***The production of oil is not commerce, and the fact that it or its refined products are to be afterward shipped or used in interstate commerce does not make its production a part of such commerce.***

—*Kidd* v. *Pearson*, 128 U. S. 1, 32 L. ed. 346;

Utah-Idaho Sugar Co. v. *Federal Trade Commission*, ... C. C. A. ..., 22 Fed. (2d) 122;

United Leather Workers International Union v. *Herkent & M. Trust Co.*, 265 U. S. 457, 68 L. ed. 1104;

Delaware L. & W. R. Co. v. *Yurkonis*, 238 U. S. 439, 444, 59 L. ed. 1397.

(c) ***To constitute an unlawful interference with interstate commerce, the state burden must be primary and direct and not secondary or indirect.***

—*West* v. *Kansas Nat. Gas Co.*, 221 U. S. 229, 55 L. ed. 716;

Pennsylvania v. *West Virginia*, 262 U. S. 553, 67 L. ed. 1117;

Foster-Fountain Packing Co. v. *Haydel*, 278 U. S. 1, 73 L. ed. 147.

(d) ***State laws regulating the production of oil, for the purpose of preventing waste, or of securing a fair and equitable distribution among those having co-equal rights to produce from a common source of supply, which effect a reduction in the amount shipped in interstate commerce, is only an indirect and remote obstruction to that commerce.***

(e) ***The laws of the State of Oklahoma and the orders of the Commission pursuant thereto do not in the slightest degree affect the sale or transportation in interstate commerce of a single barrel of oil lawfully produced in the state.***

Plaintiff assuming for the sake of the argument that the regulations are otherwise valid, asserts that they reduce the amount of oil that might otherwise reach the chan-

nels of interstate commerce and hence constitute an undue burden thereon. The facts relative to this question, as developed at the trial, are set forth in Findings of Fact XXVIII (R. Vol. I, Pt. 2, p. 209) and XXX (R. Vol. I, Pt. 2, p. 210). The subject is tersely discussed in the concluding paragraph of the opinion of the District Court (R. Vol. I, Pt. 2, p. 228).

It has been uniformly held that the mining of coal, manufacture of goods, production of beets, etc., and in general, that production or manufacture of goods is not commerce. Accordingly, it has always been held that the fact that commodities are to be afterward transported or dealt with in interstate commerce does not make their production or manufacture a part thereof. It is held, without exception, that the regulation of the production or manufacture of commodities, although intended for sale and transportation in interstate commerce, is within the police power reserved to the states, and Congress has not jurisdiction thereof. The jurisdiction of the state ends and that of the Congress attaches, when the transportation of the commodity from one state to another begins. The jurisdiction of Congress ends and that of the state again attaches when the transportation is finally ended, and the property has become a part of the general mass of the property of the state of its destination. The paramount jurisdiction of Congress exists from the beginning to the end of such transportation and exists at every stage thereof, or while, as this court has said, the commodity is in "the flowing stream from

one state to another, formed by a regular course of business." The jurisdiction of the states is excluded from the "flowing stream," only after its flow has commenced and until it ceases. Reference could be made to many decisions of this court as to the jurisdiction of the states under the police power to regulate the production and manufacture of goods intended to be entered in the stream of interstate commerce, and thus restrict the amount, or prevent any entering therein. We shall refer to but one, and ask the indulgence of the court to quote briefly. The subject was elaborately considered in *Kidd* v. *Pearson, supra.* In the course of the opinion it was said:

> "No distinction is more popular to the common mind, or more clearly expressed in economic and political literature than that between manufactures and commerce. Manufacture is transformation—the fashioning of raw materials into a change of form for use. The functions of commerce are different. The buying and selling and the transportation incidental thereto constitute commerce; * * *.
>
> "We find no provision in any of the sections of the statute under consideration, the object and purpose of which are to exert the jurisdiction of the state over persons or property or transactions within the limits of other states; or to act upon intoxicating liquors as exports. Its avowed object is to prevent, not the carrying of intoxicating liquors out of the state, but to prevent their manufacture, except for specified purposes, within the state. It is true that, notwithstanding its purposes and ends are restricted to the jurisdictional limits of the State of Iowa and apply to transactions wholly internal and between its own citizens, its effects may reach beyond the state by lessening the

amount of intoxicating liquors exported. But it does not follow that because the products of a domestic manufacturer may ultimately become the subjects of interstate commerce at the pleasure of the manufacturer, the legislation of the state respecting such manufacture is an attempted exercise of the power to regulate commerce exclusively conferred upon Congress. * * *

"As has been often said legislation (by a state) may in a great variety of ways affect commerce and persons engaged in it without constituting a regulation of it within the meaning of the Constitution, 'unless under the guise of police regulations, it imposes a *direct* burden upon interstate commerce, or *directly* interferes with its freedom.' (Citing cases.)

"We have seen that whether a state, in the exercise of its undisputed power of local administration, can enact a statute prohibiting within its limits the manufacture of intoxicating liquors, except for certain purposes, is not any longer an open question before this court. Is that right to be overthrown by the fact that the manufacturer intends to export the liquors when made? Does the statute in omitting to except from its operation the manufacture of intoxicating liquors within the limits of the state for export, constitute an unauthorized interference with the power given to Congress to regulate commerce?

* * * * * * * * *

"This court has already decided that the fact that an article was manufactured for export to another state does not of itself make it an article of interstate commerce within the meaning of section 8, article 1 of the Constitution, and that the intent of the manufacturer does not determine the time when the article or product passes from the control of the state and belongs to commerce. We refer to the case of *Coe* v. *Errol*, 116 U. S. 517."

After reviewing the case cited, it was declared:

> "The application of the principles above announced to the case under consideration leads to a conclusion against the contention of the plaintiff in error. The police power of a state is as broad and plenary as its taxing power; and property within the state is subject to the operations of the former so long as it is within the regulating restrictions of the latter."

It must be borne in mind that the regulations here in question simply define the amount of oil that may be lawfully extracted from the common supply and reduced to possession as individual personal property under given conditions. The regulations do not in the slightest degree affect the sale or transportation of the oil after it is produced in accordance with the regulations. The one who lawfully acquires title as owner by extracting it from the common reservoir and reducing it to possession, is perfectly free to transport it all, or any part he chooses, from the state, or otherwise employ it in interstate or intrastate commerce. The destinction between such regulations and those condemned in the cases relied on by appellant is obvious. In *West* v. *Kansas Natural Gas Co., supra,* the state regulations in effect prohibited the transportation from the state of gas that had been rightfully produced and had become the personal property of the producer or the purchasers from him. In the opinion, the court very pertinently pointed out the distinction between such regulations governing the right to sell and transport gas *after* it had been reduced to possession, and regulations such as were involved in *Ohio Oil Co.* v. *Indiana* and *Lindsley* v. *National Carbonic*

Gas Co., and, we say, as in this case, regulating the right to produce and reduce to possession from a common source of supply. Regulations of a similar character, requiring preference in the use of gas *after* it is produced be given to local consumers, which had the effect of withdrawing a large volume from interstate commerce, were involved in *Pennsylvania* v. *West Virginia, supra.* The statute involved in *Foster-Fountain Packing Co.* v. *Haydel, supra,* involved the question, not of the right of the State of Louisiana to regulate the taking of shrimp, or canning thereof for market, because the law expressly permitted that, but of a regulation which forbade shipping raw and unshelled shrimp out of the state *after* it had been *lawfully* reduced to possession. The regulation was held invalid as a violation of the Commerce Clause.

Practically all the other authorities relied upon by appellant were reviewed by this court in the *Leather Workers* case (265 U. S. 457), *supra.* The question involved was stated in the opinion of the court by Chief Justice TAFT, as follows (p. 464):

> "The sole question here is whether a strike against manufacturers by their employees, intended by the strikers to prevent, through illegal picketing and intimidation, continued manufacture, and having such effect, was a conspiracy to restrain interstate commerce under the Anti-trust Act because such products, when made, were to the knowledge of the strikers, to be shipped in interstate commerce to fill orders given and accepted by would-be purchasers in other states, in the *absence* of evidence that the strikers interfered or attempted to interfere with the free transport and delivery of the products, when manufactured, from the

factories to their destination in other states, or with their sale in those states."

In the course of the opinion, the cases of *United Mine Workers* v. *Coronado Coal Co.*, (first appeal) 259 U. S. 407; *Lemke* v. *Farmers Grain Company*, 258 U. S. 51; *Swift & Co.* v. *United States*, 196 U. S. 375; *Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211; *Stafford* v. *Wallace*, 258 U. S. 495; *Board of Trade* v. *Olsen*, 262 U. S. 1; *United States* v. *Patten*, 226 U. S. 540, cited by appellant, and many others were reviewed; the point decided in each was restated, and the conclusion to be drawn from all of them was stated as follows:

> "This review of the cases makes it clear that the mere reduction in the supply of an article to be shipped in interstate commerce by the *illegal* or tortious prevention of its manufacture is ordinarily an *indirect and remote* obstruction to that commerce. It is *only* when the *intent or necessary effect* upon such commerce in the article *is to enable those preventing the manufacture to monopolize the supply, control its price, or discriminate as between its would-be purchasers*, that the *unlawful* interference with its manufacture can be said *directly* to burden interstate commerce."

There was and could be no finding that the intent or effect of the statute, or the orders of the Commission thereunder, was to enable the state *(a)* to monopolize the supply of oil, *(b)* control its price, or *(c)* discriminate between purchasers. That line of cases is clearly inapplicable to the *lawful* regulations of a sovereign state, or regulations under its authority having the force of law. They are applicable to *unlawful* conspiracies under the anti-trust laws,

and even then the intent or necessary effect must be as stated. There is nothing in the later cases of *Bedford Cut Stone Co.* v. *Journeymen S. C. Assn.*, 274 U. S. 37, or the second *Coronado* appeal, 268 U. S. 295, that can be said to constitute a departure from the principles so laid down. While we do not regard it as material, it might be well to call attention to what appears to be a misconception on the part of counsel for plaintiff as to the controlling question of fact that produced different results in the decision of the two appeals of the *Coronado* case. As we read their brief at pages 127 and 128, they seem to be under the impression that a difference in production of 5000 tons per week and of 5000 tons per day, was the controlling factor. We do not so understand the opinion. The controlling point was that of the sufficiency of the evidence to take the case to the jury on the question of *intent*. As we read the opinion on the second appeal bearing on the amount of production, beginning at page 308, it was very clearly stated that whether the amount be 5000 tons per week or 5000 tons per day, that circumstance *alone* was insufficient to show "an actual intent and plan on the part of defendants thereby to restrain interstate commerce," but that evidence taken at the second trial as to the amount of coal which the defendants prevented the plaintiff from producing, "was all relevant evidence for the jury to consider and weigh as a *circumstance* with the *rest of the new* testimony in proof of *intent* of the leaders of District 21 to prevent shipments to neighboring states of such an amount of non-union coal at non-union cost." The *new* evidence adduced at the second trial was set forth in the opinion.

Reference is made at page 124 of brief for appellant to a provision in some of the earlier orders prohibiting the purchase and transportation of oil produced in *violation* of the orders, as evidencing the intent of the Commission to actually burden interstate commerce. This is not repeted in subsequent orders and is no longer in force and was not in force at the time of the trial. In later orders beginning with Order 5369, December 30, 1930, the provision referred to reads: "that all purchasers and pipe line carriers of oil in the State of Oklahoma be and they are hereby forbidden to aid or abet producers in violating this order" (R. Vol. II, Pt. 2, p. 174). It is obvious that these regulations were designed as a measure to aid in securing compliance with ratable production. No such restraint is imposed on any lawful production had in accordance with the regulations. These provisions are certainly not worthy of consideration as evidence of intent to *directly* burden interstate commerce with respect to oil lawfully produced. Even if this provision as to oil produced in violation of law can be construed as having that effect and made for that purpose, it would not afford sufficient ground for striking down the entire order in which it is found, but only for restraining the enforcement of the particular provision at the suit of someone showing himself to be affected thereby. The power to prohibit the sale or shipment in interstate commerce of goods unlawfully manufactured or produced seems to have been recognized in *Kidd* v. *Pearson, supra.* In the opinion, it was said:

> "The main vice in this argument consists in the unqualified assumption that the statute legalizes the

manufacture. The proposition that, supposing the goods were once lawfully called into existence, it would then be beyond the power of the state either to forbid or impede their exportation, may be conceded. Here, however, the very question underlying the case is whether the goods ever came lawfully into existence."

We submit that the decision of the District Court on this question is correct.

ANTI-TRUST LAWS.

We fail to see any possible application of the portion of appellant's brief under this head. It is true that under Title 15, Sec. 26, U. S. C. A., private parties may now under certain circumstances, maintain a suit for injunctive relief, against threatened loss or damage by a violation of the anti-trust laws. But certainly in such suit the persons alleged to be engaged in the alleged combination or conspiracy are necessary parties. There are none such here. The persons, if such there be, are nowhere named.

Surely an unsupported statement in the brief, that certain companies who, according to Stock Exchange Manuals (not introduced in evidence), having a large capitalization, and who voluntarily contributed to funds raised to pay expenses of administration of the proration laws in amounts ranging from sixty-five cents to upwards of ten thousand dollars, each in proportion to his production, control the production of crude oil in the Mid-Continent field, and by themselves and through their subsidiaries dominate the oil industry in Oklahoma and Texas, is not sufficient basis for injunctive relief against them. The proceeding in the case

cited from one of the intermediate appellate courts of Texas was by the state against a corporation for forfeiture of its charter for alleged violation of the anti-trust laws of Texas. The proceeding was not against the city or any other party to annul the franchise alleged to have been secured in pursuance of the combination in violation of the statute.

We fail to see the relevancy of the abortive proceedings of producers in the Houston, Texas, Convention in 1929, to secure approval of the Federal Oil Conservation Board of a tentative plan to limit production, presumably throughout the United States, in 1929, to what it had been in 1928, or of the opinion of the Attorney General advising that the board had no jurisdiction over the matter, and stating that if such an agreement was voluntarily entered into, it would be investigated with a view to ascertaining whether there had been a violation of the anti-trust laws.

The Oklahoma law in question had been enacted more than fourteen years before that, and proceedings had been instituted under the provision of the act by interested parties, and rules had been promulgated by the Commission carrying the act into effect in the Seminole field more than a year before the Houston Convention. The fact that the plan of proration set forth in the long-since superseded order of June 30, 1930 (quoted p. 139, appellant's brief), was submitted to the parties interested in protecting their correlative rights, and approved as just and fair by all except one, proves nothing but that the Commission was endeavoring to administer the law fairly and equitably, and that practically all those affected were satisfied with the regulations made for the protection of their co-equal rights.

In this connection, appellant again quotes from the colloquy between Judge KENNAMER and Mr. West, who appeared at the trial as a representative of the governor. The governor was not a party to the case, though notified of its pendency as required by the statute. It appears that Mr. West was afforded the opportunity of filing a brief, though none of the counsel for appellees have ever seen it. Through the courtesy of court and counsel, Mr. West was given the opportunity to make an oral argument. We have no idea upon what fact, if any, Mr. West based the statement that the law was being administered under monopoly. Certainly, his opinion so expressed is not binding on the parties to the suit, either as an admission against interest or otherwise.

The complete answer to all of appellant's contentions and insinuations under this heading is found in the findings of fact of the District Court. The correctness of these findings is not questioned in this court. We refer particularly to Findings XXVII and XXX (R. Vol. I, Pt. 2, pp. 209-210). See, also, our discussion under "No Domination by Major Companies," and "Price Fixing."

Conclusion.

For the reasons stated we respectfully submit that there is no merit in the points relied on by plaintiff-appellant in No. 485, and that it is not entitled to any of the relief it seeks at the hands of this court.

Brief on Cross Appeal.

Statement.

The appellees in No. 485 have perfected an appeal from that part of the final decree (R. Vol. I, Pt. 2, p. 248) which adjudged sections 8 and 9 of the so-called "Curtailment Act" or "Oil Conservation Act" (Sec. 7961, 7962, C. O. S. 1921) to be invalid, and perpetually enjoined the proper officers of the state from enforcing the same.

In the majority opinion (R. Vol. I, Pt. 2, pp. 218, 222, 228), the District Court held that these sections provide penalties for violation of the statute, and do not provide penalties for violations of the rules and regulations promulgated by the Commission thereunder. It was further held that the provisions of the statute were too general (in the absence of specific rules and regulations by the Commission) to be sustained as a penal statute, and since the sections were not in terms applicable to violations of the Commission's rules and regulations, that neither section could be invoked in aid of the enforcement of either the statute as such, or the rules and regulations of the Commission.

While the District Court treated the two sections together in the opinion and conclusions of law [par. (16), R. Vol. I, Pt. 2, p. 216], the assignments of error deal with the two sections separately, and for the reason that one section is penal in character and the other is not, it is necessary that the assignments as affecting each section be separately presented.

The definite statement of points to be relied upon appear in the record (R. Vol. I, Pt. 2, pp. 412-414).

Specification of Such of the Assigned Errors as Are Intended to Be Urged in No. 486. *(R. Vol. I, Pt. 2, p. 394.)*

Defendants below, appellants in No. 486, in their assignments of error, say the court below erred:

1. The court erred in its sixteenth conclusion of law, in holding that section 8, providing punishment by fine and imprisonment for direct or indirect violations of the provisions of the Act of the Oklahoma Legislature approved February 11, 1915, entitled, "An Act defining and prohibiting the waste of crude oil or petroleum, providing for the equitable taking of the same from the ground and conferring authority on the Corporation Commission, prescribing the penalty for the violation of the act and declaring an emergency," being section 7961, Compiled Oklahoma Statutes 1921, provided in terms a penalty for violation of the act only, and not for violations of the Orders, Rules and Regulations of the Commission made pursuant to the act for the purpose of carrying it into effect.

2. The court erred in not holding and decreeing that valid orders, rules and regulations of the Corporation Commission made pursuant to the act for the purpose of carrying it into effect, became a part of the act, and that violations of such orders, rules and regulations constitute a violation of the act within the meaning of said section 8.

3. * * *

4. * * *

5. The court having found in its Finding of Fact No. XXVI, that, "no prosecution has been commenced against

the plaintiff or any of its officers, agents or employees under section 8 of the act," and not having found that such prosecution was threatened, or contemplated, it erred in construing said section and pronouncing judgment upon its validity; and further erred in not holding and decreeing that the construction and validity of said section 8 did not properly arise in this suit.

6. * * *

7. The court erred in its said decree entered September 11th, 1931, adjudging that said section 8 of said Act of the Oklahoma Legislature approved February 11th, 1915, being section 7961, Compiled Oklahoma Statutes 1921, is not valid, and perpetually enjoining and restraining J. Berry King, Attorney General of Oklahoma, and Lewis R. Morris, County Attorney of Oklahoma County, Oklahoma, and each of them, their servants and employees, from enforcing or attempting to enforce the provisions of said section 8 of said act, or any part thereof.

8. The court erred in its sixteenth conclusion of law, in holding that the provisions of section 9 of the Act of the Legislature of the State of Oklahoma, approved February 11th, 1915, being section 7962, Compiled Oklahoma Statutes 1921, for the appointment of a receiver for the operation only of producing wells and marketing the product thereof, of any person violating the provisions of the act, by a court of competent jurisdiction at the suit of the state through the Attorney General, or any County Attorney, imposes a penalty.

9. The court erred in its sixteenth conclusion of law, in holding that section 9 of the Act of the Oklahoma Legislature approved February 11, 1915, being section 7962, Compiled Oklahoma Statutes 1921, in terms imposes a penalty for violations of the act only, and may not be invoked to secure the appointment of a receiver to operate the producing wells and market the production therefrom of any person, firm or corporation violating the orders, rules and regulations of the Commission made pursuant to the act for the purpose of carrying it into effect.

10. The court erred in not holding and decreeing that valid orders, rules and regulations of the Corporation Commission made pursuant to the act for the purpose of carrying it into effect, became a part of the act.

11. * * *

12. The court erred in its sixteenth conclusion of law, in holding that sections 1, 3, 4, 5 and 6 of the said Act of the Legislature of the State of Oklahoma, approved February 11th, 1915, being sections 7954, 7956, 7957, 7958, and 7959, Compiled Oklahoma Statutes 1921, are too indefinite and uncertain as penal provisions to warrant the appointment of a receiver as provided by section 9 of the said act, being section 7962, Compiled Oklahoma Statutes 1921, for violations thereof, as distinguished from violations of the orders, rules and regulations of the Commission.

13. * * *

14. The court not having found that there is any pending proceeding for the appointment of a receiver pursuant to the provisions of section 9 of said Act of the Legislature

of the State of Oklahoma approved February 11, 1915, being section 7962, Compiled Oklahoma Statutes 1921, it erred in construing said section and pronouncing judgment upon its validity; and further erred in not holding and decreeing that the construction and validity of said section 9 did not properly arise in this suit.

15. • • •

16. The court erred on its said decree entered September 11th, 1931, adjudging that said section 9 of said Act of the Oklahoma Legislature approved February 11th, 1915, is not valid, and perpetually enjoining and restraining J. Berry King, Attorney General of Oklahoma, and Lewis R. Morris, County Attorney of Oklahoma County, Oklahoma, and each of them, their servants and employees, from enforcing or attempting to enforce the provisions of said section 9 of said act, or any part thereof.

ARGUMENT.

Section 8 of the Act (Sec. 7961, C. O. S. 1921).

Assignments of Error I to VII, Inc. (R. Vol. I, Pt. 2, pp. 394, 395, 396.)

This section provides:

> "That in addition to any penalty that may be imposed by the Corporation Commission for contempt, any person, firm or corporation, or any officer, agent or employee thereof, directly or *indirectly* violating the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof, in a court of competent jurisdiction, shall be punished by a fine in any sum not to exceed five thousand ($5000.00) dollars, or by imprisonment in the county jail not to exceed thirty (30) days, or by both fine and imprisonment."

In Finding of Fact XXXI (R. Vol. I, Pt. 2, p. 212) it is recited:

> "No prosecution has been commenced against the plaintiff or any of its officers, agents or employees under section 8 of the Act."

There was no finding that such prosecution had been threatened.

During careful readings of the third amended bill we failed to note any allegation that any criminal prosecution under section 8 was contemplated by the defendants or other officer of the state, either for alleged violation of any provision of the act, or any rule or regulation of the Commission. There was no evidence tending to show that such prosecution was threatened or contemplated.

It will be noted that under section 10 the invalidity of any section shall not in any manner affect the validity of the remainder of the act. It should be borne in mind that the primary object of this suit is to test the "constitutionality of said act passed by the Oklahoma Legislature, and approved on Feb. 11, 1915, and the validity of the orders, rules and regulations of the Corporation Commission made and entered pursuant thereto" (Par. XXXIV, Third Amended Bill, R. Vol. I, Pt. 1, p. 31). This suit was instituted by plaintiff for that purpose September 15, 1930, before it had produced any oil in excess of its just proportion as prescribed by the statute. Indeed, it appears that the complainant produced the first oil from the Oklahoma City field in September, 1930 (Finding IV, R. 181).

The rule appears to be clearly established by this court that,

(a) ***Until an attempt is made to enforce the penalty clauses of a statute, if severable from the remainder thereof, there is no occasion to pass upon their validity.***

In *Ohio River and W. R. Co.* v. *Dittey*, 232 U. S. 576, 594, 58 L. ed. 737, 746, this court said:

> "Finally, it is contended that the act is unconstitutional because of the severity of the penalties imposed for withholding the tax. But *these actions do not involve any present attempt to enforce the penalties;* and the act contains a section (160) which in terms declares: 'The sections of this act, and every part of such sections, are hereby declared to be independent sections and parts of sections, and the holding of any section or part thereof to be void or ineffective shall not affect any other section or part thereof.' *The pen-*

alty clauses, if themselves unconstitutional, are severable, and there is therefore no present occasion to pass upon their validity." (Citing cases.) (Italics ours.)

In *Grand Trunk R. Co.* v. *Michigan R. Com.*, 231 U. S. 457, 473, 58 L. ed. 310, 319, this court said:

"But the provision for penalties is in a section by itself *and when their enforcement is attempted their constitutionality can then be determined.*" (Italics ours.)

See, also:

Rail and River Coal Company v. *Yaple*, 236 U. S. 338, 350, 59 L. ed. 607, 616;

Phoenix R. Co. v. *Geary*, 239 U. S. 277, 282, 60 L. ed. 287, 289;

Grenada Lumber Co. v. *Mississippi*, 217 U. S. 433, 443, 54 L. ed. 826, 831;

Western Union Telegraph Company v. *City of Richmond*, 224 U. S. 160, 172, 56 L. ed. 710, 717.

The District Court recognized this rule in refusing to pass upon the validity of the provision of section 6 of the statutes authorizing the Commission to punish as for contempt a violation of its orders. In the opinion (R. Vol. I. Pt. 2, pp. 218, 225) that court said:

"The Commission has not invoked that provision of the act for the enforcement of the proration orders against the plaintiff and the validity of such portion of section 6 is not here presented."

In assuming to construe section 8 and pronounce judgment on its validity as construed by it, the District Court must have confused this section with the proceedings once

initiated by the Attorney General under section 9, hereafter referred to, and lost sight of the fact that no attempt had ever been made by anyone to prosecute the complainant or any of its officers, agents or employees under section 8.

Attention is respectfully called to the fact that adherence to the foregoing rule is particularly desirable in this case.

The District Court, by construction, limited the scope of this section to those matters only which could be determined from the face of the statute unaided by any question determined by the Commission under the authority thereof. The section, as so construed, was held invalid. The construction of state statutes is primarily one for the state courts. In determining whether any right secured by the Federal Constitution is violated by a state statute, the national courts must accept the construction of the statute by the highest court of the state and regard it as part of the provision. *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61, 73. The courts of Oklahoma have not yet had occasion to construe this particular section. While, if necessary to the decision of a case within its jurisdiction, the national courts are not precluded from construing a state statute because it has not been construed by the state court, yet, it would seem proper not to unnecessarily construe state statutes and pronounce judgment of their validity as so construed.

It may very well be that the state court, in obedience to the mandate requiring it to construe all statutes, penal as well as remedial, liberally with a view to effect their ob-

jects (Sec. 3563, C. O. S. 1921) will feel constrained to construe this section as sufficiently comprehensive to include those who produce oil in excess of their statutory proportion when the factors have been determined by the Commission pursuant to the provisions of the statute.

If the court should disagree with us on this point, then we submit that,

(b) ***Under a proper construction of the act as a whole, the production of oil in excess of the statutory proportion prescribed by the act, when the number of barrels constituting the respective statutory factors has been determined by the Commission, constitutes a violation of the act, and affords a sufficiently definite and certain standard of conduct for a penal statute.***

It will be noted that the Act (Sec. 4) directly limits the amount an operator may produce from a given source of supply, when the full production therefrom may be had only under conditions constituting waste, as defined in section 3 (*e.g.*, when the full production exceeds the reasonable market demands) to that proportion of the amount that may be produced without waste (*e.g.*, the reasonable market demand) which the full production of the wells of such operator bears to the total production of such common source of supply.

Under section 6, jurisdiction is conferred on the Commission to determine any question relating to the enforcement of the act. When the Commission has determined the questions of the amount that may be produced without waste (*e.g.*, the market demand) from a given source of

supply, the total production therefrom, and the full production of the wells of the various operators, then the production of oil by an operator from his wells in excess of the proportion fixed by section 4 of the statute constitutes a violation of the act, and not merely a violation of a Commission's order as held by the District Court.

It might very well be that failure to observe some independent regulation of the Commission, such as filing daily reports of production as required by Par. 3 (1) of Order No. 5414 (R. Vol. II, Pt. 2, p. 187), would constitute merely a violation of an order of the Commission and not a violation of the act within the purview of section 8. See *United States* v. *Eaton*, 144 U. S. 677. But it seems clear that the production of oil in excess of the proportion prescribed by section 4, where the sole function performed by the Commission is to ascertain and supply the actual figures for the statutory formula, constitutes a violation of the act, rather than a violation of an order of the Commission.

When the quantity of oil that may be produced from a given source of supply, without waste, the total production thereof, and the full production of the wells of an operator, have been ascertained and declared by the Commission, the factors are supplied from which the operator can readily calculate the amount of oil the statute (Sec. 4) permits him to produce, thus supplying a definite and certain standard by which he may regulate his conduct. Production of oil in excess of the statutory proportion of the full production of his wells constitutes a violation of the provisions of the act.

Let us consider the application of the act particularly to that feature prohibiting waste incident to production of oil in excess of reasonable market demands. Section 4 should be construed in connection with sections 3, 5 and 6. When the appropriate provisions of the last mentioned sections are interpolated at the proper place in section 4, it will read as follows:

> *Sec. 4.* "That whenever the full production from any common source of supply" (as determined from gauges taken under rules and regulations prescribed by the Corporation Commission pursuant to section 5) "can only be obtained under conditions constituting waste as herein defined" (that is to say, when such full production is in excess of reasonable market demands, as provided in Sec. 3, and determined by the Commission pursuant to Sec. 6) "then any person, firm or corporation, having the right to drill into and produce oil from any such common source of supply, may take therefrom only such proportion of all crude oil and petroleum that may be produced therefrom without waste" (the reasonable market demand as so determined by the Commission) "as the production of the well or wells of any such person, firm or corporation" (as so determined by said gauge) "bears to the total production" (as so determined by said guage) "of such common source of supply."

So construed, there is not anything indefinite or uncertain about the amount of the oil that may be produced from a given well. The standard of conduct is sufficient for a criminal statute.

In *Omaechevarria* v. *Idaho*, 246 U. S. 343, 348, 62 L. ed. 763, 768, this court in passing upon the Idaho sheep-grazing statute, said:

"*Second:* It is also urged that the Idaho statute, being a criminal one, is so indefinite in its terms as to violate the guaranty by the 14th Amendment of due process of law, *since it fails to provide for the ascertainment of the boundaries of a 'range,' or for determining what length of time is necessary to constitute a prior occupation a 'usual' one within the meaning of the act.* Men familiar with range conditions and desirous of observing the law will have little difficulty in determining what is prohibited by it. Similar expressions are common in the criminal statutes of other states. This statute presents no greater uncertainty or difficulty, in application to necessarily varying facts, than has been repeatedly sanctioned by this court. *Nash* v. *United States,* 229 U. S. 373, 377, 57 L. ed. 1232, 1235, 33 Sup. Ct. Rep. 780; *Miller* v. *Strahl,* 239 U. S. 426, 434, 60 L. ed. 364, 368, 36 Sup. Ct. Rep. 147." (Italics ours.)

The ascertainment of the percentage of the potential of one's well which by section 4 he may lawfully produce is not left to his own investigation and inquiry into the facts by which it is to be determined, and hence he cannot in any case be in doubt as might one violating the Idaho statute (held to be sufficiently definite); but, it is ascertained for his information by a duly constituted agency of the state; and, when it is so found out, the agency doing that thing does not instruct him (except *per forma)* what percentage he may produce, for the statute itself does so.

The well owner is a party to the proceedings conducted by the Commission under section 6 at and by which the percentage is ascertained, so that he cannot fail to know in advance of its ascertainment, for his information.

When a person produces oil in excess of that amount, how can it be said that he has not been guilty, in the exact language of section 8, of "directly or indirectly violating the provisions of this act"?

We, therefore, respectfully submit that so much of said final decree as enjoins the enforcement of section 8 should be reversed.

Section 9 of the Act (Section 7962, C. O. S. 1921).

Assignments of Error VIII to XVI (R. Vol. I, Pt. 2, pp. 396, 397, 398.)

This section reads as follows:

> "That in addition to any penalty imposed under the preceding section, any person, firm or corporation violating the provisions of this act, shall be subject to have his or its producing property placed in the hands of a receiver by a court of competent jurisdiction, at the suit of the state through the Attorney General or any county attorney, but such receivership shall only extend to the operating of producing wells and the marketing of the production thereof, under the provisions of this act."

All that was said in the foregoing discussion of the assignments relating to section 8, is applicable here, unless referring to the first point, *(a)*, there made, but not to the second, *(b)*, the court should be of the opinion that the proceedings which had been instituted by the Attorney General for injunction and the appointment of a receiver and subsequently dismissed, rendered it necessary that the validity of this section be determined. There was no proceeding of any kind under section 9, pending at the time of the trial,

and there was no finding that the Attorney General was threatening to renew such proceedings, and there was no evidence to that effect.

The circumstances relating to the institution of proceedings under section 9 and the abandonment thereof are set forth in Findings of Fact III (R. Vol. I, Pt. 2, p. 179), IV (R. 180) and XXXI (R. 211). In substance they are as follows:

The Champlin Refining Company drilled a well known as McCalep No. 1 (R. Vol. I, Pt. 2, p. 181) on five lots in Roosevelt Place Addition to Oklahoma City, with an area of .48 of an acre (R. Vol. I, Pt. 2, p. 179). The recoverable oil in that area was 33,000 barrels per acre (R. Vol. I, Pt. 2, p. 181). Therefore, the recoverable oil originally underlying these five lots was 15,480 barrels. Prior to February 9, 1931, 28,664 barrels of oil was produced from this well, or more than 13,000 barrels in excess of the recoverable oil originally in place under these lots. That company also drilled a well known as Naden No. 1 on four lots in Armourdale Addition (R. 181) with an area of 1/2 acre (R. 179). The recoverable oil at that location was 27,000 barrels per acre (R. 181). Therefore, the total recoverable oil originally in place under these lots was 13,500 barrels. In the month of September alone, 13,953 barrels of oil were produced from this well, a little in excess of the recoverable oil originally underlying them. Not being satisfied with production at the rate permitted by the statute, although it permitted taking more oil than was originally in place under its properties, and desiring to produce oil from its wells without restriction, the company applied to the District

Court in this suit for a temporary injunction, which was denied on February 9, 1931 (R. Vol. 1, Pt. 1, p. 3). Thereafter, in disregard of the statute and findings of the Commission thereunder, determining the market demand, potential of the field, and rates of allowable production, and notwithstanding the denial of a temporary injunction against the enforcement of the act and orders of the Commission pursuant thereto, the company proceeded to produce oil from these wells in excess of the amount permitted by the statute and findings of the Commission. From February 9, 1931 (the date of the order denying the temporary injunction) to the institution of proceedings by the Attorney General, it produced 214,682 barrels from McCalep No. 1, and 196,577 barrels from Naden No. 1. The company completed two wells in March, 1931, known as Seal No. 1 and Seal No. 2 on two blocks in Compton Park Addition (R. 181) having an area of five acres. The recoverable oil at the location of Seal No. 1 was 13,000 barrels per acre, and at No. 2, 7,500 barrels per acre, or an average of 10,250 barrels per acre, making the recoverable oil for the five-acre tract 51,250 barrels. Prior to institution of the proceedings by the Attorney General, 153,292 barrels were produced from these two wells (R. 181), almost three times as much as the quantity of recoverable oil originally in place under the two blocks. This production of 564,551 barrels from these four wells on these small tracts during the period from February 9 to May 28, 1931, not only was largely drawn and drained from adjacent properties, but was greatly in excess of the amount allowed at the statutory rate. In its third amended bill, the company admitted that it

"produced approximately 300,000 barrels of crude oil from its wells in the Oklahoma City field in excess of the amount it would have been entitled to produce if the Curtailment Act of 1915 and the Commission's orders herein referred to are valid." (R. 30)

Under these circumstances, the Attorney General felt that it was his duty to employ the means provided by law to protect the rights of other producers to a just distribution of the recoverable oil in the pool as provided by the statute. On the last mentioned date he instituted an action in the state court designed to secure the future operation of these wells, and production of oil therefrom in accordance with law. To that end, he asked that a receiver be appointed to operate the wells, and pending a hearing on the application, that the company be restrained by injunction from further violations. The injunction was granted. The company thereupon made application to the District Court in this suit to restrain the enforcement of this section and the penalty sections of the act pending the final determination of the suit. An order was made to that effect on June 13, 1931, on condition that a bond be given to pay the damages sustained by any person by reason of the violation of the proration orders in the event they were finally adjudged to be valid (R. Vol. I, Pt. 2, p. 373). The bond was given. The Attorney General thereupon and some time before the trial of this cause, dismissed the action in the state court. Subsequently, on application of other interested parties, the order of June 13 was vacated (R. Vol. I, Pt. 2, p. 375).

We submit that under these circumstances and the authorities heretofore cited, it was not necessary upon trial and final decision of this suit to construe section 9, and determine whether under its provisions the state could employ the remedy of receivership to secure compliance with a valid law and valid orders made under authority thereof for the purpose of carrying it into effect. Those questions can be determined in a suit that may hereafter be brought for the purpose of securing the appointment of a receiver and any right of the defendant therein, arising under the Federal Constitution, or otherwise, may then be fully protected.

However, if this court should be of the opinion that the question properly arose in this case, and the decision thereof was necessary to a final disposition of the cause, then, we respectfully submit that the District Court erred in its interpretation and determination of the validity of this section.

(c) *Section 9 does not impose a penalty as punishment for past violations of the act, but is a civil remedy, of the class of injunction and mandamus, that may be invoked by the state to secure compliance with the law.*

The District Court, throughout its opinion, denominated the provisions of section 9 for the appointment of a receiver, as a *penalty* section. As imposing a penalty, the section was strictly construed, and it was held that in view of the language, "violating the provisions of this act," there was excluded from the purview of this section any order, finding or determination of the Commission made

under authority of the act, and that proceedings could not be maintained under this section for production of oil in excess of the statutory rate, calculated on the determination by the Commission of the market demand, and total production from the common source of supply. For reasons heretofore suggested, we think this construction is erroneous.

It has been frequently held that either mandamus or injunction is an appropriate remedy to enforce compliance by a carrier or other utility with rates fixed, or other regulation prescribed by statute, or rule of a commission to whom the power has been delegated. Statutes expressly so providing are not uncommon. It will hardly be said that such remedy is one penal in character. There are many striking points of resemblance between the branch of the jurisdiction of equity to appoint receivers and that which is involved in granting injunctions. The two remedies are alike branches of the general preventive jurisdiction of courts of equity, and are prospective rather than retrospective in their operation, being invoked for the prevention of future injuries rather than for the redress of grievances already committed. The common object of each is preventive rather than punitory in its purpose. Neither remedy has the effect of changing title. The difference is that receivership may prove effective, where injunction might fail. Both remedies rest to a considerable extent in the sound judicial discretion of the court to which the application is addressed, to be governed by a consideration of all the circumstances of the case. Ordinarily, a receiver

will not be appointed where an injunction will afford ample protection. The section in question simply declares that violations of the act for the prevention of waste and to secure fair and equitable taking from a common source of supply is ground for a receivership. It is a measure designed to secure future compliance with the law and not to punish for past offenses. It has been held that even in the absence of express statutory authority, a court of equity may appoint a receiver in aid of injunction to take charge of property used in violation of law. *Columbia Athletic Club* v. *State,* 143 Ind. 98, 40 N. E. 914, 52 Am. St. Rep. 407, 28 L. R. A. 727.

This section having made violation of the provisions of the act a ground for receivership, the procedure is necessarily governed by the statutes of the state applying to receiverships generally. This is found in article XIX, ch. 3, C. O. S. 1921. Under that article, the court must require of the receiver a bond in an adequate amount and with sufficient surety. Provision is made for appeals from interlocutory orders of appointment. It is obvious that the producing wells would be operated by the receiver under the direction of the court in compliance with the law. The proceeds of oil produced are not confiscated to the state, but go to the owner of the well. The remedy is effective to secure operation of producing wells in accordance with law, but it is in no sense drastic. The only pecuniary loss that could possibly be suffered by the owner is the cost of the proceeding. Title to the property remains in the owner; the proceeds of its operation, less expenses, go to him. When the owner of wells operates them in violation of law, he is

temporarily deprived of their control, to the end that others may not suffer further injury by unlawful operations. Obviously, as soon as a receiver is no longer necessary to secure that end, he would be discharged.

It is not at all certain that any order or finding of the Commission is a condition precedent to the institution of proceedings by the Attorney General or the County Attorney under section 9. The total or full production of the common source of supply is a mere matter of mathematical calculation from the gauges taken under the rules and regulations of the Commission (Sec. 5). The market demand is a matter ascertainable by inquiry among purchasers. Any operator, of course, knows the production of his own wells. It is not a difficult matter for any operator to ascertain for himself the amount of oil the statute (Sec. 4) permits him to produce from his wells. It may very well be that an operator should not be required at the peril of criminal penalties, such as provided by section 8, to determine whether, in the operation of his wells, the amount of oil produced exceeds the proportion permitted by the statute; but in a proceeding under section 9, in the absence of findings or previous determination by the Commission as to market demand, and full production of all wells, any issue as to those facts may be determined therein, and if it appears that the operator will operate his wells in accordance therewith, the court, in the exercise of a sound discretion, would no doubt refuse to interfere with the control of the wells by the appointment of a receiver.

In any event, after the Commission has, in the exercise

of the jurisdiction conferred by section 6, determined the reasonable market demand for oil from a given common source of supply, and the full or potential production of the wells producing therefrom, all the necessary factors are supplied, and any operator may know with certainty the amount of oil he may produce under the provisions of section 4. Production in excess of that amount is a violation of the provisions of the act, and not a violation of a Commission order. The findings of the Commission simply supply a determination of the facts, upon which the statute operates. The act of the operator in producing oil excessively is an act prohibited by the statute, not by order of the Commission. The Commission has power to determine the market demand and the full production, and the effect of such determination is to make production in excess of the statutory ratio, based upon the factors thus established, a violation of the act. In addition to the decision in the Idaho case cited above we cite *Anton Caha* v. *United States*, 152 U. S. 211, 218.

To hold that production in excess of the statutory proportion, calculated upon the statutory factors, as established by findings of the Commission, is not a violation of the provisions of the act, appears to be not only an extremely strict construction of the section, but one that is unreasonably so, and one calculated to defeat rather than promote the legislative intent.

We respectfully submit that so much of the decree as enjoins the enforcement of section 9, should be reversed.

In conclusion, it is respectfully submitted that the decree of the District Court should be affirmed in so far as it sustains the validity of sections 1, 3, 4, 5, 6, and 10 of the act in question and the orders of the Commission made thereunder, and in denying plaintiff's application for an injunction; and that said decree be reversed in so far as it held sections 8 and 9 of said act to be invalid and enjoined their enforcement.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931.

No. 486

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA AND PAUL WALKER, E. R. HUGHES AND C. C. CHILDERS, ET AL., APPELLANTS,

vs.

CHAMPLIN REFINING COMPANY, APPELLEE.

REPLY BRIEF OF CHAMPLIN REFINING COMPANY, APPELLEE.

JAMES M. BECK,
HARRY O. GLASSER,
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(36,300)

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APPELLANTS,

VS.

CHAMPLIN REFINING COMPANY

APPELLEE.

REPLY BRIEF OF CHAMPLIN REFINING COMPANY, APPELLEE.

Statement.

The question presented herein concerns the validity of Sections 8 and 9 of the Oklahoma "Curtailment Act" (Sec. 7961, 7962, C. O. S. 1921), which sections are commonly known as the penalty sections of said Act. These sections read as follows:

> "Section 8. That in addition to any penalty that may be imposed by the Corporation Commission for contempt, any person, firm, or corporation, or any officer, agent or em-

ployee thereof, directly or indirectly *violating the provisions of this act*, shall be guilty of a misdemeanor, and upon conviction thereof, in a court of competent jurisdiction, shall be punished by a fine in any sum not to exceed five thousand dollars ($5,000.00) or by imprisonment in the county jail not to exceed thirty (30) days, or by both fine and imprisonment.

"Section 9. That in addition to any penalty imposed under the preceding section, any person, firm or corporation, *violating the provisions of this act*, shall be subject to have his or its producing property placed in the hands of a receiver by a court of competent jurisdiction, at the suit of the State through the Attorney General, or any county attorney, but such receivership shall only extend to the operating of producing wells and the marketing of the production thereof, under the provisions of this act.' (Italics ours.)

The three judges of the trial court were unanimously of the opinion that these penalty sections were void as in violation of the Federal Constitution. The opinion of Judges Cotteral and Phillips on this proposition held as follows:

"The statute has a dual aspect: First, as a penal statute to prevent waste and to protect the co-equal rights of the several owners of land situate over a common pool of oil and

gas to take from the common source of supply; and, second, a regulatory statute to be supplemented by rules, regulations and orders of the Commission to accomplish the same end.

"The penalties provided are for violations of the statute and no penalties are provided for violations of the rules and regulations promulgated by the Commission.

"We are of the opinion that the statute is too indefinite and uncertain to be sustained as a penal statute. Smith v. Cahoon, Sheriff, 283 U. S. (553). An oil operator should not be required at the peril of severe criminal penalties to determine in the operation of his oil and gas wells whether he is committing economic waste or producing in excess of reasonable market demands because such terms are not defined in the Act and are of uncertain and doubtful meaning. Likewise, a producer from a common source of supply should not be required to determine at the peril of such penalties whether he can operate at full production without committing economic waste or producing in excess of reasonable market demands.

"Furthermore, it is unreasonable to require an operator to choose between two approved methods of operation, the results of which

cannot be forecast with precise accuracy, in dealing with the ordinary problems confronted in the drilling and operation of oil and gas wells, at the peril, if he makes the wrong choice that some underground waste will result and he thereby becomes subjected to such severe penalties, under a statute which affords no guide for the operator under such circumstances. However, except in one particular hereinafter mentioned, 'the validity of the Act as a penal statute is not before us." (R. Vol. 1, Pt. 2, p. 222.)

* * ** *

"The facts with reference to such proceedings are set forth in paragraph 34 of the Third Amended and Supplemental Bill of Complaint and need not be repeated here. They are predicated on the provisions of section 9 of the Act. This provision is penal in character and is for the purpose of punishing violations of the provisions of the Act itself, (not the orders of the Commission), as a criminal statute. For the reasons hereinbefore indicated, we think this section is void and that such proceedings in the state courts should be enjoined." (R.Vol.1, Pt.2, p.228).

The separate opinion of Judge Kennamer, although dissenting as to the validity of the other sections of the Act, concurred as to the invalidity of the penalty sections:

"I concur in the opinion of the majority of the court, holding the penalty provisions of the Conservation Act unconstitutional." (R. Vol. 1, Pt. 2, P. 229.)

* * * * *

"The conclusion reached by my distitnguished colleagues 'That the statute is too indefinite and uncertain to be sustained as a penal statute,' cannot be seriously controverted. The drastic provisions of the statute subject an oil operator to a penalty of $5,000.00 fine, 30 days in jail, or both, in the discretion of the court when such operator committed economic waste, underground waste, waste incidental to production in excess of reasonable market demands, and that his property in a suit by the State, through the Attorney General or any County Attorney, may be placed in an indeterminate receivership. It was held in Connally v. General Construction Co., 269 U. S. 385, 70 Law Ed. 322, 46 S. C. 126, that 'Any statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law.'" (R. Vol. 1, Pt. 2, pp. 233 and 234.)

Argument.

I.

The Penalties Provided in Sections 8 and 9 are for Violation of the Prohibitions of the Act, as Distinguished from the Rules of the Commission.

As stated by the trial court, the Act by its terms prohibits, first, the production of oil in such a manner as to constitute waste as therein defined; and, second, it gives authority to the Corporation Commission to prescribe rules regulating such production.

Sections 1, 2, 3 and 4 of the Act contain prohibitions *which may be enforced by the Attorney General of the State or any County Attorney regardless of any omission on the part of the Corporation Commission.*

The defendants, in fact, admit in their brief that:

> "It is not at all certain that any order or finding of the Commission is a condition precedent to the institution of proceedings by the Attorney General or the County Attorney under Section 9."

For example, Sections 1 and 3 read:

> "Section 1. That the production of crude oil or petroleum in the State of Oklahoma, in such manner and under such conditions as to constitute waste, is hereby prohibited."

* * * * *

"Section 3. That the term 'waste' as used herein, in addition to its ordinary meaning, shall include economic waste, underground waste, surface waste, and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands. The Corporation Commission shall have authority to make rules and regulations for the prevention of such wastes, and for the protection of all fresh water strata, and oil and gas bearing strata, encountered in any well drilled for oil."

These two sections, when construed together, prohibit "the production of crude oil or petroleum in the State of Oklahoma, in such manner and under such conditions as to constitute waste", "economic waste, underground waste, surface waste, and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands".

In addition, Section 2 prohibits "the taking of crude oil or petroleum from any oil-bearing sand or sands in the State of Oklahoma at a time when there is not a market demand therefor at the well at a price equivalent to the actual value of such crude oil or petroleum * * * * *"

Also Section 4 prohibits the taking of crude oil in excess of market demands as follows:

> "That whenever the full production from any common source of supply of crude oil or petroleum in this State can only be obtained under conditions constituting waste as herein defined, then any person, firm or corporation, having the right to drill into and produce oil from any such common source of supply, may take therefrom only such proportion of all crude oil and petroleum that may be produced therefrom, without waste, as the production of the well or wells of any such person, firm or corporation, bears to the total production of such common source or supply."
>
> * * * *

Section 9 then provides that any person "*violating the provisions of this act*, shall be subject to have his or its producing property placed in the hands of a receiver by a court of competent jurisdiction, at the suit of the State through the Attorney General or any County Attorney".

As the Act reads, either the Attorney General or any County Attorney may enforce the receivership provided in Section 9 against any person who, in the judgment of any "court of competent jurisdiction", has produced crude oil in such manner as to constitute any of the "wastes" described in the Sections above set forth.

The brief of the defendant states, by inference, that the above described prohibitions of the Act do not become operative until the Corporation Commission has entered its rules upon the subject. This contention finds no support from the statute itself. The prohibitions contained in Sections 1, 2, 3, and 4 are absolute. Nothing is contained in the statute which gives the Corporation Commission the exclusive right to define the different classes of waste, which are prohibited thereby. Although Section 3 provides that "the Corporation Commission shall have authority to make rules and regulations for the prevention of such wastes", it does not give the Commission power to prescribe definitely what kind of an act would constitute, for example, "economic waste," nor to determine what kind of an act would be outside of such term. Such authority could be exercised only by a "court of competent jurisdiction" upon suit brought by one of the attorneys of the State as specified in Section 9.

The brief of the defendants states that "under Section 6, jurisdiction is conferred on the Commission to determine any question relating to the enforcement of the act." To plaintiff, however, Section 6, merely means that the Commission is constituted as a court to hear any complaints as to infractions of the law. It does not intimate that the law shall not become operative until the Commission makes its rules, but has entirely an opposite meaning—that the prohibitions of the law are abso-

lute and self executing, and that the Commission may sit as a court to determine whether such prohibitions have been violated.

The provision of Section 1, that "waste" be prohibited (as defined in Section 3) is so positive and so independent of any exclusive jurisdiction of the Corporation Commission, and Section 9 so plainly provides a penalty for violating the provisions of the *Act* as distinguished from the rules of the Commission, that it appears most unreasonable to say that the Act would not become operative until the Commission had entered its rules. Still more unreasonable must it appear to say that any person committing, for example, "economic waste" or "underground waste," whatever these terms may mean, would be immune from prosecution if the Commission had failed or neglected to make rules for the prevention of such wastes.

II.

The Act is so Indefinite That any Penalty Prescribed for the Violation Thereof Constitutes a Denial of Due Process of Law.

This Court, in the case of Cline v. Frink Dairy Company, 274 U. S. 445-483; 71 L. Ed. 1146-1151, in holding the anti-trust law of the State of Colorado unconstitutional, said:

> "We think that the act is so vague and uncertain in its description of what shall con-

stitute its criminal violations that it is invalid under the 14th Amendment."

The Court further said, in stating the general rule applicable to such cases:

> "We are now considering a case of state legislation and threatened prosecutions in a state court where only the 14th Amendment applies, but that requires that there should be due process of law and this certainly imposes upon a state an obligation to frame its criminal statutes so that those to whom they are addressed may know what standard of conduct is intended to be required. And such is the effect of our cases. Connally v. General Constr. Co., 269 U. S. 385, 70 L. Ed. 322, 46, Sup. Ct. Rep. 126; International Harvester Co. v. Kentucky, 234 U. S. 216, 58 L. Ed. 1284, 34 Sup. Ct. Rep. 853; Collins v. Kentucky, 234 U. S. 624, 58 L. Ed. 1510, 34 Sup. Ct. Rep. 924; American Seeding Mach. Co. v. Kentucky, 236 U. S. 660, 59 L. Ed. 773, 35 Sup. Ct. Rep. 456; Waters-Pierce Oil Co. v. Texas, 212 U. S. 86, 53 L. Ed. 417, 29 Sup. Ct. Rep. 220; Fox v. Washington, 236 U. S. 273, 59 L. Ed. 573, 35 Sup. Ct. Rep. 383; Omaechevarria v. Idaho, 246 U. S. 343, 62 L. Ed. 763, 38 Sup. Ct. Rep. 323; Miller v. Strahl, 239 U. S. 426, 60 L. Ed. 364, 36 Sup. Ct. Rep. 147; Tedrow v. A. T. Lewis & Son Drygoods Co., 255 U. S.

98, 65 L. Ed. 524, 41 Sup. Ct. Rep. 303; Weeds v. United States, 255 U. S. 109, 65 L. Ed. 537, 41 Sup. Ct. Rep. 306; and Kinnane v. Detroit Creamery Co., 255 U. S. 102, 65 L. Ed. 531, 41 Sup. Ct. Rep. 304."

This rule of law has also been stated by this Court in the case of Connally vs. General Construction Company, 269 U. S. 385, 396; 70 L. Ed. 322, as follows:

> "The dividing line between what is lawful and unlawful cannot be left to conjecture. The citizen cannot be held to answer charges based upon penal statutes whose mandates are so uncertain that they will reasonably admit of different constructions. A criminal statute cannot rest upon an uncertain foundation. The crime, and the elements constituting it, must be so clearly expressed that the ordinary person can intelligently choose, in advance, what course it is lawful for him to pursue. Penal statutes prohibiting the doing of certain things, and providing a punishment for their violation, should not admit of such a double meaning that the citizen may act upon the one conception of its requirements and the courts upon another."

The following penal statutes have been held unconstitutional as fixing too uncertain a "standard of conduct".

In the case of Connally v. General Construction Company, supra, a statute of the State of Oklahoma, which required a contractor under penalty to pay his employees "not less than the current rate of per diem wages in the locality where the work is performed", was held unconstitutional on this ground.

The statute which was held unconstitutional in the case of Cline v. Frink Dairy Company, supra, provided "that it is hereby made unlawful for any person wilfully x x x to make any unjust or unreasonable rate or charge in handling or dealing in or with any necessaries".

A similar provision was held unlawful in the case of U. S. v. Cohen Grocery Co., 255 U. S. 89; 65 L. Ed. 520, and the above stated rule was reiterated in the recent case of Smith v. Cahoon, Sheriff, 283 U. S. 553; 75 L.Ed.1264,citing International Harvester Company v. Kentucky, 234 U. S. 216, 221; Collins v. Kentucky, 234 U. S. 634, 638; United States v. Cohen Grocery Company, 255 U. S. 81; Weeds, Inc., v. United States 255 U. S. 109; Connally v. General Construction Company, 269 U. S. 385, 391.

The statute in the present case violates the above announced principles. For example, it is made unlawful for any person to produce oil in such manner as to constitute "economic waste". What this term means must be based entirely on conjecture.

It may be assumed, of course, that the term refers to the waste of money, and in the light of Section 2, most probably means that oil shall not be sold at a price less than its "actual value" as determined by the price of the retail products. It might be intended, however, to prohibit the drilling of more wells than would be necessary to produce the maximum amount of oil from a given tract, or it could be intended, broadly, to make it unlawful for any operator to produce his wells at anything less than the maximum of financial efficiency.

It would be impossible in the ordinary course of business to operate any well with absolute financial or economic efficiency. What, then, would be regarded as waste? The useless spending of $100.00, $1,000.00, or $100,000.00? Where would the line be drawn? And even though the oil operator may sell his oil below the price which his neighbors consider adequate, the consuming public gains by reason of the saving which they may effect in the purchase of gasoline. Again, even though the oil operator spends more money than is absolutely necessary in the drilling of wells, the manufacturers of his drilling equipment and the laborers who depend upon these factories, gain in the increased business which they thereby acquire.

In fact, it is difficult to conceive that there could be any "economic waste" to the public at large in any of these situations.

The power of a state legislature to forbid financial inefficiency is a proposition concerning the merits of the main case (No. 485) and is not in issue here. It is certain, however, even assuming that a state legislature has such power, that the blanket prohibition of "economic waste" is capable of such a wide variety of interpretations that the average person would be at a loss to determine the scope and application of the term.

The term "underground waste" is also capable of many constructions. Dr. Ralph Arnold, a geologist of established nationwide reputation, testified that the term was of uncertain definition, even to the science of geology. (R. Vol. 1, P. 326). It might mean the dissipation of too much gas energy. It might refer to inefficient drilling which would allow water to saturate and ruin the oil-bearing sands. If it has either of these meanings, who shall advise the oil operator as to how much gas energy he shall be permitted to employ in the lifting of his oil, and who shall advise him as to whether his drilling methods are efficient or inefficient? Surely this "standard of conduct" is too indefinite to permit of a penalty in violation thereof; and if scientists are uncertain of the meaning of the term, how could the ordinary oil operator be expected to confine his operations within its scope, under the penalty of a drastic receivership if he makes a mistake in his interpretation.

Even more indefinite and uncertain is the prohi-

bition of the production of oil in excess of "transportation or marketing facilities or reasonable market demands", and the prohibition against the "taking of crude oil or petroleum from any oil-bearing sand or sands in the State of Oklahoma at a time when there is not a market demand therefore at the well at a price equivalent to the actual value of such crude oil". So palpably vague and uncertain are such provisions that a lengthy discussion would serve no purpose. The trial court was eminently correct in holding that the Act does not furnish a sufficient guide to constitute due process of law under the 14th Amendment.

III

The Receivership Provided by Section 9 is a Penalty.

It is clear that the legislature intended that such receivership should constitute a penalty, and not, as the defendant contends, a mere civil remedy. A reading of Sections 8 and 9 shows this intention.

Section 8 provides the penalty of fine and imprisonment.

Section 9 then provides that "*in addition* to any penalty imposed under the preceding section, any person violating the provisions of the Act shall be subject to have his producing property placed in the hands of a receiver".

The legislature, in effect, says: "We have provided one penalty in Section 8 for violation of the Act;

now we are providing an *additional* penalty in Section 9".

The receivership provided by Section 9 cannot be compared with injunction or mandamus. Those civil remedies are mere orders either to do certain things or to refrain from doing certain things. The receivership, on the other hand, is a damaging commitment of property imposed by the State to enforce the obedience to its mandates as set forth in the Act.

Just as a jail sentence imposed on a person places him in the custody of the State and thereby effectively prevents him from committing further offenses during his incarceration, so the receivership places the offending oil well in the custody of the State, and thereby prevents the commission of further offenses by such well. The receivership is, in fact, a jail sentence imposed on property.

The terms of the receivership are most onerous. First, there is no bond provided to protect the owner from loss by reason of the careless or malicious operation of the well. An inefficient or malicious receiver may so operate the well as to ruin its producing qualities, and if the receiver be financially irresponsible, the owner has lost his entire investment, without recourse or possibility of relief.

If the receiver be dishonest and embezzle the proceeds from the well to his own use, the well-owner in this case also is without protection.

Again, the receivership is indeterminate. No

bond can be posted by the well-owner to assure his future observance of the law. No court is authorized to dissolve the receivership upon any showing that the receivership has served its purpose.

According to the provisions of the Act, the well may be kept in the hands of the receiver so long as it produces oil, or until the State, at its pleasure, chooses to return the property to its rightful owner.

The defendants in their brief refer to the general Oklahoma statute regarding receiverships (Ch. 3, Art, 19, C. O. S. 1921). This statute, however, provides only for receiverships in the ordinary cases to which receiverships have always been applied. It makes no provision whatever for a receivership of property which has been used in the violation of the law, unless such a recieversḥip be included in the provision, "In all other cases where receivers have heretofore been appointed by the usages of the courts of equity".

It is the belief of plaintiff, however, that it has not been the general practice of courts of equity to authorize a receivership for such purpose, and that the safeguards provided in the general statute above cited do not apply to the receivership provided for in Section 9 of the Curtailment Act. It appears, in fact, to plaintiff that the receivership provided for in Section 9 is merely a sequestration of property in disguise—a criminal penalty under a civil label.

The greatest demand of modern business is free and ready credit. Any act which will deprive a business of that confidence required for the maintenance of its credit, is the most severe kind of injury and would cripple a business far more than the payment of a fine. Such crippling of credit would be the almost inevitable result of the imposition of a receivership upon the producing properties of an oil company. This factor alone makes the receivership provided by Section 9 not only a penalty but a far more drastic and severe penalty than the fine and imprisonment provided in Section 8.

As corroborative of this proposition, the facts of this case show that when actual prosecution was started, the Attorney General selected the receivership in preference to the penalties provided in Section 8, which the State had been threatening to enforce, as the most effective method, not only of preventing recurrence of what he considered violations of the statute, but also as the most vivid method of making an example out of the plaintiff company to show other possible offenders the injury which the State might inflict for any infraction of the law.

The receivership has all of the attributes of a common penalty. It is so drastic and severe that the fear of its imposition serves to prevent any attempt to violate the statute, and if the statute be violated, it serves to place the offending property in the custody of the state so that the offense cannot be repeated. These attributes are entirely unlike those

of the civil remedies of injunction and mandamus, and resemble more the seizure of contraband goods, and the forfeiture of property used in law breaking, such as automobiles used to transport intoxicating liquor.

A ruling on this proposition need not turn, however, upon the technical definition of the term "penalty". In all events, it is apparent that the receivership imposed by Section 9, would inflict a serious injury upon any person against whom it might be enforced. This being so, the due process of law required by the 14th Amendment demands that the Act prescribe some fixed, definite and certain standard by which all persons may know how to control their conduct so as to escape such injurious imposition.

IV.

The State has Attempted to Enforce Against this Plaintiff the Penalties Provided in Sections 8 and 9 and the Constitutionality of such Sections is Therefore in Issue in this Case.

The allegations of the Second and Third Amended and Supplemental Bills of Complaint show clearly that the penalty sections were in issue. The Third Amended and Supplemental Bill of Complaint, upon which this case was tried in the court below, alleges fully that the Attorney General had filed his petition,

> "wherein it is prayed that the court appoint a receiver to take possession of the producing properties of the plaintiff herein, located in the Oklahoma City oil field upon the lands hereinbefore described, alleging as cause therefor that this plaintiff has violated the provisions of the Act of the Oklahoma Legislature approved February 11th, 1915, * * *."

This bill further alleges that the trial court thereafter on application of this plaintiff entered its order

> "restraining the defendants Paul Walker, E. R. Hughes and C. C. Childers, individually and as members of the Corporation Commission of the State of Oklahoma, and the defendants Louis R. Morris and J. Berry King, from instituting *any proceedings* against this plaintiff under any of the penalty provisions of the above described oil conservation law, and further ordering the said J. Berry King to dissolve the restraining order in the receivership suit hereinabove described; * * *."

This bill then alleged that the institution of proceedings

> "*under the provisions of sections* 8 *and* 9 *of the Act of the Oklahoma legislature* approved February 11th, 1915, or other proceedings will destroy plaintiff's financial credit and embarrass it in the operation of its business, * * * * *."

and the bill then asked in its prayer that the defendants

> "be temporarily and permanently enjoined from instituting proceedings against this plaintiff under the provisions of sections 3498 and 3499, Compiled Oklahoma Statutes, 1921, and from causing proceedings to be instituted against this plaintiff under the provisions of sections 8 and 9 of the Act approved February 11th, 1915; * * * * *."

The Second Amended and Supplemental Bill of Complaint reads, over the verification of Plaintiff:

> "that the aforesaid defendants, acting as Corporation Commissioners of the State of Oklahoma and as such Commission are threatening to punish this plaintiff and impose upon it the penalties prescribed by statute, including a receivership for its properties".

The definite allegation that defendants were threatening to impose the fines provided in Section 8, as fully set forth in the Second Amended Bill, must have been omitted from the Third Amended Bill through oversight, as the Third Amended Bill was, by agreement of counsel, filed at the trial, and was intended merely to consolidate all the pleadings of plaintiff which had been filed theretofore, and was not intended to change any of the issues as set forth

in the second bill and the mesne pleadings filed subsequent thereto.

The answer of Defendants to this Third Amended Bill not only fails to deny that the State was threatening to impose the fine provided for in Section 8, but by inference admits that such was the case, as follows:

> "They (defendants) further allege that the loss to plaintiff by having to pay fines imposed by defendants under the penalty provisions of said statute for violations of the said orders during the pendency of this suit, would not be comparable to the much greater losses which would be sustained by the owners of oil wells upon lands adjacent, etc., * * *". (R. vol. 1, pt. 1, p. 72).

The final decree of the trial court reads, with reference to the penalty sections:

> "* * *; that Sections 8 and 9 of said Act (Sections 7961 and 7962 of the Compiled Oklahoma Statutes 1921), being the penalty provisions of said Act, are not valid; to which the defendants and each of them excepts; that the defendants, J. BERRY KING, Attorney General of Oklahoma and LEWIS R. MORRIS, County Attorney of Oklahoma County, Oklahoma, and each of them, their servants and employees be, and they are hereby perpetually enjoined and restrained

> from enforcing or attempting to enforce the provisions or any part thereof of said Sections 8 and 9 of said Act; to which the defendants and each of them excepts; * * *". (R. vol. 1, pt. 2, p. 248).

The record in the case discloses, therefore, that the Attorney General of the State was not only threatening to, but had actually commenced prosecution under Section 9 of the Act; and that prosecutions under Section 8 had been threatened. The record further shows that the trial court on plaintiff's application had entered an interlocutory injunction restraining the Attorney General from continuing his prosecution under Section 9, ordering him to dismiss the receivership action and enjoining him from carrying out any threatened prosecution under Section 8.

This interlocutory order reads as follows:

> "Now, therefore, it is ordered and adjudged until the further order of this court, that the defendants, Paul Walker, E. R. Hughes and C. C. Childers, individually and as members of the Corporation Commission of the State of Oklahoma, and all persons acting by or under them be and they are hereby enjoined from instituting any proceedings against the plaintiff under the provisions of Sections 3498, 3499 and 7959, Compiled Oklahoma Statutes, 1921, on account of alleged violations of said proration order or or-

ders; that the defendant, Lewis R. Morris, individually and as county attorney of Oklahoma County, Oklahoma, and J. Berry King, individually and as Attorney General of the State of Oklahoma, and all persons acting by, through or under them, be and they are hereby enjoined from instituting or prosecuting receivership proceedings against the plaintiff under the provisions of Section 7962, Compiled Oklahoma Statutes of 1921.

* * * *

"It is further ordered and adjudged that J. Berry King, as Attorney General of the State of Oklahoma, immediately take the necessary action to dissolve the restraining order or temporary injunction heretofore issued in Cause No.....", entitled, "State of Oklahoma, ex rel. J. Berry King, Attorney General versus Champlin Refining Company", now pending in the District Court of Oklahoma County, Oklahoma." (R. vol. 1, pt. 2, p. 374).

Such interloctutory injunction came on for hearing at the trial on the merits on plaintiff's prayer in its Third Amended and Supplemental Bill of Complaint that said interlocutory injunction be made permanent. The decree of the trial court granted plaintiff's petition as to the penalty sections, and made permanent the interlocutory injunction as to Sections 8 and 9. From this decree, the defendant,

Corporation Commission, has appealed as to the validity of the penalty sections.

We cannot see, in the light of the record, how it can be denied that either Section 8 or Section 9 is involved in this case. It is true that there is no testimony in the appellate record showing the threatening prosecutions under Section 8. This may be explained in part by the fact that most of the evidence on the penalty sections was presented at the hearing on the interlocutory injunction prior to the hearing on the merits. It is sufficient, however, that in the Second Amended and Supplemental Bill of Complaint, the plaintiff alleged over its verification that prosecutions had been threatened under Section 8, which allegations were not denied by the defendant, either in its answer or in the testimony presented in its behalf.

The statement in brief of defendant, that the proceedings which had been instituted by the Attorney General to enforce the penalty of Section 9 against this plaintiff, were subsequently dismissed, should not be read so as to infer that these proceedings were dismissed voluntarily. Such is not the fact of the case. They were dismissed upon order of the court as hereinabove described and at the trial on the merits, this injunctitve order was made permanent. Under such circumstances, it is clearly apparent that the Attorney General was threatening to renew the proceedings, and that it was en-

tirely proper for the trial court to issue its permanent injunction against such action.

The further statement in brief of defendant that the Attorney General had dismissed his action "some time before the trial of this cause" should not be misinterpreted. The fact is that the interlocutory order was entered on June 13th, 1931 (R. Vol. 1. pt. 2, p. 373), and the trial on the merits was ordered ten days later, that is, on June 23, 1931. As explanatory of this proceeding, the Plaintiff might say that it had been resting its case up to that time on an appeal from the decision on a former interlocutory injunction, which appeal is now pending in this Court as case No. 122 of this term When the interlocutory order of June 13, 1931, was entered, however, the effect thereof was to give the plaintiff the right to produce sufficient oil to at least partially operate its refinery, and the defendant, Corporation Commission, thereupon insisted that the entire case be immediately tried upon its merits. Their request was granted and the case was tried upon ten days notice as hereinabove described.

Plaintiff respectfully submits in summary that the penalties prescribed in Sections 8 and 9 of the Oklahoma Curtailment Act are in violation of the 14th Amendment to the Federal Constitution in that the standard of conduct prescribed in said Act is so vague and indefinite as to deny due process of law.

Plaintiff further submits that the receivership prescribed in Section 9 is a burdensome penalty as well as the fine and imprisonment prescribed in Section 8, and that, since the state has actually commenced receivership proceedings and continually threatened the imposition of fines under Section 8, both sections are properly within the issues of this case.

Plaintiff respectfully asks that the decree of the trial court holding void these penalty sections be by this Court affirmed.

Respectfully submitted,

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Harry O. Glasser,
Geo. S. Ramsey,
Horace G. McKeever,
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Counsel for Appellee,
Champlin Refining Company.

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In the Supreme Court of the United States

October Term, 1931.

No. 485

CHAMPLIN REFINING COMPANY, *Appellant,*

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA AND PAUL WALKER, E. R. HUGHES, AND C. C. CHILDERS, ETC., *ET AL., Appellees,*

No. 486

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA AND PAUL WALKER, E. R. HUGHES, AND C. C. CHILDERS, ETC., *ET AL., Appellants,*

vs.

CHAMPLIN REFINING COMPANY, *Appellee.*

BRIEF OF PHILIP KATES, AMICUS CURIAE

(36,299-36,300)

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IN THE SUPREME COURT OF THE UNITED STATES.

***October Term, 1931.* Nos. 485, 486.**

Champlin Refining Company, *Appellant,*

vs.

Corporation Commission of the State of Oklahoma, *et al.*

BRIEF OF PHILIP KATES, *AMICUS CURIAE.*

Statement of the Case.

The Champlin Refining Company (appellant) by orders of the Oklahoma Corporation Commission (appellee) (R. Vol. 2, pp. 85-221) made under an Oklahoma statute (Okla. Sess. Laws 1915, p. 28), was prevented from taking from its own wells such oil as it deemed necessary for its own use, and sued to enjoin the enforcement of the orders (R., Vol. 1, p. 6). It was refused relief in a three-judge District Court and is here on appeal, alleging that the law and the orders are in contravention of the Federal Constitution; being a regulation by Oklahoma of commerce in oil among the states. (Assignments of Error 7 and 9; R., Vol. 1, p. 379). This brief is directed to that point alone.

The law (Okla. Sess. Laws 1915, p. 28) and these orders (appendix to this brief; R., Vol. 2, pp. 85-221) on their face show that the Oklahoma scheme of control of oil production to prevent waste is based upon the legal principle that the "waste" against which the law is directed exists when the State Commission decides that, when added to the oil of other states, uncontrolled production in Oklahoma will glut the market. The factor which determines the re-

straint to be imposed on appellant is the national supply (Appendix). That was eliminated from the law by the Supreme Court of Oklahoma (*Julian* v. *Capshaw*, 145 Okl. 237), but remains in the orders as the basic norm of waste; the canon of restraint (R., Vol. 2, pp. 85 to 221).

The opinion of the court below is in the record, Vol. 1, page 218, and 51 Fed. (2d) 823.

ARGUMENT

The trial court put aside the interstate commerce question saying (R., Vol. 1, p. 228): "The principle is too well settled to require citation, that the congressional power of regulation attaches only when interstate transportation has begun."

The most effective regulation is a limitation on the amount of a commodity which may be allowed to move. And such regulation must necessarily precede a movement. In the second appeal in the *Coronado* case (268 U. S. 295), this court, through Chief Justice TAFT, held prevention by a labor union of mining coal in Sebastian County, Arkansas, against the Act of Congress. The movement of unmined coal could not have begun. The test in that case was whether the prevention would materially affect the national supply. In the first appeal the record showed a prevention of 5000 tons a week (259 U. S. 344); the second appeal 5000 tons a day. This latter, it was held, was a material amount (approaching 1% of the national supply) which

might move in commerce among, and so enter the markets of, the states.*

The Oklahoma scheme of control, as appears from the terms of the statute and upon the face of the orders, is based upon and varies with the total production of petroleum in all states. The State Commission determines the national supply and fixes the amount which Oklahoma shall contribute to what it finds the total demand (J. E. 1856, R., Vol. 2, p. 231; J. E. 1864, p. 233). The State Commission has found that 65% to 75% of Oklahoma oil enters interstate markets (R., Vol. 2, p. 135). In 1930 Oklahoma produced 24% of the nation's oil. WILBUR, *Conservation*, Govt. Ptg. Office, 1931, pp. 85, 86.

Here is a question of the power of a state to regulate national markets. Who controls the supplies entering the market controls the market. Section 8 of article 1 of the Federal Constitution was adopted to prevent in any event one state, and section 10 to prevent any group—except under congressional permit—from exerting this power.

Section 10 of article 1 recognizes the right of states to form compacts under the authority of Congress; and the court will judicially know that at this time a compact (recommended by the Oil Conservation Board in its first re-

*In 1914, the year in which the interference involved in the *Coronado* case occurred, the production of bituminous coal was proceeding at the rate of about 1,035,000 gross tons per day or 8,145,000 tons per week. The potential capacity of the mines involved was, Chief Justice TAFT said, "substantially in excess of 5,000 tons per day." We are justified in assuming that he did not have in mind more than ten thousand tons per day.

Comparing the national production with the highest estimate of the potential of the mines involved, 70,000 tons per week, it appears that an interference with a potential of less than one per cent of the national supply was held to be an interference with interstate commerce.

—Okla. State Bar Journal, Vol. 2, p. 66, June, 1931.

port in 1927) is being drawn by the oil producing states to proportion allowable production among them; the only effective method of stabilizing this industry. This will, under the Constitution, be submitted for congressional approval. A compact was signed between Oklahoma, Kansas and Texas September 18, 1931 (Yale Law Rev., Nov., 1931, p. 66, note 123), but not sent to Congress.

A new compact was drafted by the oil states advisory committee on March 1, 1932, but not made public (Ass. Press dispatch, that date).

The right of any state to regulate the production of its natural resources in the interest of conservation, or public health and safety is admitted, except to this extent: no state may, under the guise of conservation, prevent or directly and materially limit, the exportation of its resources to other states *(West* v. *Kansas Natural Gas Co.*, 221 U. S. 229).

The state regulation here is founded upon, and changes with, the national supply and the demands of the national market; and the restraint of appellant in taking oil from his wells contracts as the national supply rises (Par. c., d., R., Vol. 2, pp. 125, 126). The state in imposing this restraint is not acting within the orbit of its constitution; it has entered that of the Federal Constitution. It determines directly, necessarily and materially the amount of a basic commodity which it will permit to enter commerce among, and to be offered in the markets of, the several states.

This court has, in a series of decisions, beginning with the *Ohio Oil Company* case (177 U. S. 209) upheld various progressive plans for state control of oil and gas produc-

tion. Recently a California statute, which may have the effect of materially limiting the supply from the great fields of that state, has been upheld. (*Bandini* v. *Superior Court*, 284 U. S. 8).

But in all those cases any limitation of the amount of the commodity entering commerce among the states was an accidental effect of laws against waste. The laws upheld may or may not affect the national markets.

In Oklahoma "waste" exists, not because there is improper operation of the wells, but because there is in the judgment of the State Commission an excessive supply. The national supply of crude petroleum—whether it is normal or excessive—determines the existence of "waste." To use the classification of Aristotle, that is the material cause, the thing which calls the law into operation. The limitation of that supply is the final cause—the object to be accomplished.

The court may judicially notice that in 1931, as the supply from East Texas rose, the restraint on Oklahoma producers progressively tightened; and that in the summer of 1931, by martial law, the Oklahoma wells were shut in to raise the price of Oklahoma oil to $1.00 per barrel. (Yale Law Rev., Nov., 1931, p. 56.)

The orders of the Oklahoma Commission are the machinery for the enforcement of the law; and however much the fact is obscured in a cloud of words about conservation, waste, ratable taking—when the vital parts of orders are read (Appendix)—their purpose and effect are seen to be a necessary, a direct, a substantial control of the national commerce in crude petroleum.

The opinion of Chief Justice TAFT in the second *Coronado Coal* case (268 U. S. 295), should be controlling on this appeal. In that case the stoppage of less than 1% of the daily national production of bituminous coal was held to be an interference by a labor union with interstate commerce. In this case the limitation is of a far greater percentage of petroleum, about 15% of the national supply (65% to 75% of 24%). The coal was unmined; and so, as much as unproduced oil, was not itself the subject of commerce; and the mines were all in one county in Arkansas, as here the oil wells are all in Oklahoma. There was, in the *Coronado* case, no burden on, but an interference with, commerce among the states.

The interference disclosed in this appeal is more substantial than that in the second *Coronado* case. It is more direct than was the law of Maryland imposing a tax on dealers in imported articles, which this court struck down over a hundred years ago in *Brown* v. *Maryland* (12 Wheat. 419).

ROGER TANEY, in that case, contended for the state's power. The law was wise he said. It was necessary. But Chief Justice MARSHALL answered, the Constitution has not confided that subject to the good sense of the state.

It is not without significance that the execution of these laws has been entrusted, by the States of Oklahoma and Texas, to their military forces. The disturbance which has been caused is no longer of academic interest or private concern. It shakes the frame of constitutional government. The Supreme Court of Oklahoma has very recently said (Feb. 2, 1932), speaking through Mr. Justice FLETCHER

RILEY: "The people of Oklahoma have * * * indicated their ineptitude for the spirit of martial law." *(In re Initiated Petitions,* 61 Okla. App. Ct. Rep. 216, at p. 220.)

This case comes up upon a record which, however confused it may be in details, shows, *in limine* an act of national concern in purpose and effect.

Since the enforcement of the law against appellant is necessarily predicated upon orders based on the varying levels of the national supply of petroleum, the mere inspection of the pages of the record which disclose that fact should conclude the hearing. The condition upon which the law is evoked is national. The California statute recently before this court shows that it is not necessary to go outside the basic law, nor to put the oil fields under military rule to protect the oil supplies of the state from waste. But a scheme, as shown in this record, to restrain production in one state because of a national oversupply, is contrary to the Constitution.

The purpose of article 8 of section 1 has been said by this court *(Pennsylvania* v. *West Virginia,* 262 U. S. 553), to be

> "to protect commercial intercourse from invidious restraints, to prevent interference through conflicting state laws, and to insure uniform regulation. It means that in the matter of interstate regulation we are a single nation—one and the same people."

An inspection of the law and the orders in this appeal shows that they are directed not primarily against waste, but against what the state considers an oversupply to the nation. If Oklahoma has the power to limit this substan-

tially, as here, then, as Mr. Justice McKenna said in *West* v. *Kansas Nat. Gas Co., supra:*

> "Pennsylvania may keep its coal, the northwest its timber, the mining states their minerals; and why may not the products of the field be brought within the principle? * * * If one state has it (the power) all states have it; embargo may be retaliated by embargo, and commerce halted at state lines."

In Harvard Law Review, February, 1932 (p. 564, n. 48), it is suggested that this case may be distinguished from the *Kansas Natural Gas* case, *supra,* as this legislation "deals with commodities not yet owned because not yet reduced to possession."

In the *Kansas Natural* case the gas affected by the statute had not been taken from the ground: the producer had penetrated the gas bearing sand, as here (R., Vol. 2, p. 180, IV) appellant as penetrated the oil bearing sand. Possession of the gas in that case was the same as appellant's possession of oil in this.

Respectfully,

Philip Kates,
Amicus Curiae.

Tulsa, Oklahoma.

APPENDIX.

The orders of the Commission creating the condition complained of in this appeal are found in the record, Vol. 2, pages 85 to 221:

1. In order 5189 (2d par. sub-div. c., R., Vol. 2, p. 86) the base order on which all others stand, the Commission finds the potential production of petroleum in the United States was at that time (June 30, 1930) 4,730,000 barrels per day. The demand for domestic use and export was 2,840,000 barrels per day. The potential production in Oklahoma was 1,362,000 barrels per day (p. 88). That the demand from Oklahoma was 650,000 barrels per day. The production in Oklahoma was restricted to the latter amount allocated among the pools as shown in the table (R., Vol. 2, pp. 89, 90).

2. In order 5369 (R., p. 124) the Commission finds (2nd par., sub-div. c., R., Vol. 2, p. 125) that the potential production of the United States was at that time (October 28th, 1930) 10,000,000 barrels per day; imports 300,000 barrels per day; national demand for domestic use and export 2,800,000 barrels per day; that (R., p. 127, par. f) the potential production from Oklahoma during October, 1930, will be 3,638,470 barrels per day; during November 4,142,872 barrels per day; in December 4,294,444 barrels per day; that the demand from Oklahoma will be 550,000 barrels per day in October; 545,000 barrels in November; 535,000 barrels in December, daily. By reason of these facts the production in Oklahoma is limited to the market demand and allocated among the pools as shown in the table (R., pp. 128-129). The Commission limited the production in Oklahoma to those figures (2d par., R., p. 139).

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In the Supreme Court of the United States

October Term, 1931.

No. 485

CHAMPLIN REFINING COMPANY, *Appellant,*

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, AND PAUL WALKER, E. R. HUGHES, AND C. C. CHILDERS, ETC., *ET AL., Appellees.*

No. 486

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, AND PAUL WALKER, E. R. HUGHES, AND C. C. CHILDERS, ETC., *ET AL., Appellants,*

vs.

CHAMPLIN REFINING COMPANY, *Appellee.*

Brief of Oil States Advisory Committee, Amici Curiae.

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(36,299-36,300)

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IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1931.

No. 485

CHAMPLIN REFINING COMPANY, *Appellant,*

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, AND PAUL WALKER, E. R. HUGHES, AND C. C. CHILDERS, ETC., *ET AL., Appellees,*

No. 486

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, AND PAUL WALKER, E. R. HUGHES, AND C. C. CHILDERS, ETC., *ET AL., Appellants,*

vs.

CHAMPLIN REFINING COMPANY, *Appellee.*

BRIEF OF OIL STATES ADVISORY COMMITTEE, *AMICI CURIAE.*

(a) Opinion of Court Below.

51 Fed. (2d) 823. Also Record Vol. 1, part 2, pp. 18-248, inclusive.

This cause below was submitted to a statutory court of three judges, Judges Cotteral and Phillips rendering the

majority opinion (Rec. Vol. 1, part 2, p. 218), District Judge Kennamer dissenting (Rec. Vol. 1, part 2, p. 229).

(b) Reason for This Brief.

This suit, in a very vital way, involves the public interest. December 19, 1924, President Coolidge addressed a letter to the Secretary of War, the Secretary of the Navy, the Secretary of the Interior, and the Secertary of Commerce, constituting these cabinet members as the Federal Oil Conservation Board (App., p. 75). Continuously since then, the Congress of the United States has made appropriations for the use of the Federal Oil Board in carrying out the duties delegated to it by the President. Fifty thousand dollars was appropriated in 1925 (43 Stat. L. 754); fifty thousand dollars was appropriated in 1926 (44 Stat. L. 310); fifty thousand dollars was appropriated in 1927 (44 Stat. L. 1075); fifty thousand dollars was appropriated in 1928 (45 Stat. L. 882); fifty thousand dollars was appropriated in 1929 (45 Stat. L. 1626); seventeen thousand two hundred twenty dollars was appropriated in 1930 (46 Stat. L. 235), and twenty thousand dollars was appropriated in 1931 (46 Stat. L. 1362). In this letter of appointment, the President, at the very outset, observed: "It is evident that the present methods of capturing our oil deposits is wasteful to an alarming degree in that it has become impossible to conserve oil in the ground under our present leasing and royalty practices if a neighboring owner or lessee desires to gain possession of his deposits." The President, after pointing out that our petroleum resources are limited, stressed two basic considerations: *First*, that the national

security demanded adequate supplies of petroleum and its products; and, *secondly,* that American industry generally was supremely dependent upon gasoline, fuel, and lubricating oil. The President, in his letter, then continues: "For the purpose of giving this responsibility of government, in all of its aspects, the consideration it demands, I have constituted a Federal Oil Conservation Board, consisting of the Secretaries of War, Navy, Interior, and Commerce, to study the government's responsibilities and to enlist the full co-operation of representatives of the oil industry in the investigation. * * * I would express the desire that these conferences may be open and exhaustive. The oil industry itself might be permitted to determine its own future. That future might be left to the simple working of the law of supply and demand, *but for the patent fact that the oil industry's welfare is so intimately linked with the industrial prosperity and safety of the whole people,* that government and business may well join forces to work out this problem of practical conservation." (Italics ours.)

Immediately following the creation of the Federal Oil Board, that agency, in co-operation with the American Petroleum Industry, entered upon an exhaustive investigation of the petroleum conservation needs of the United States, and that investigation has proceeded from time to time since. At intervals since September 6, 1926, the Board has reported to the President upon this subject. Excerpts from the reports of the Board show the public aspect of the questions now before the court. In the report of the Federal Oil Conservation Board of September 6, 1926, addressed to the President, it is said: "There must be nat-

ural concern over our future supply of oil because of the manifest dependence of so large a part of our industrial life, national defense, and domestic comfort, upon continued adequate supplies of lubricants for all machinery and fuel for automotive engines. Our future resources in coal and iron have been so determined by geological evidence and exploration that we can measure our proved supplies by centuries. But the local character of oil deposits, their geographical uncertainty, and the vast amount of unproductive capital required for a long, advanced exploration, prevent any such advance proof in the case of oil. The very nature of all minerals, in that they do not reproduce themselves, of course, renders their extraction a depletion of assets. And, therefore, the resources of oil which are proven at any given moment cannot, from the nature of things, be otherwise than a reserve against current production. They do not imply future production of oil." (Report, Sept. 6, 1926, p. 5.)

After adverting to the fact that one-half of the country's oil production comes from about four per cent of the producing wells, namely, flush wells in new pools, this report continues: "However, this dependence upon fortuitous discovery of new fields renders it imperative that every effort should be made to secure the maximum amount of oil from the known fields" (p. 6). In speaking of the reservoir energy that chiefly produces oil, the Board observed: "The right of the state to prevent the waste of natural resources is rendered more important in this matter by the newly discovered, or at least more widely recognized facts, regarding the role of gas in the oil sand. Gas is more than

a commodity of smaller value associated with oil; it is the efficient agent provided by nature for bringing the oil within the reach of men. Dissolved in the oil, the gas makes the oil flow more freely to the well and there forces it upward, and the longer the gas is retained in solution, the larger is the recovery of oil. Waste of gas is therefore a double waste, and the impairment of the gas pressure in an oil sand by one owner may prevent his neighbors from recovering any of the oil beneath their land, and himself from securing more than a small part of the oil underlying his land" (p. 14). Among the recommendations made in this report was the following: "* * * And state legislation, with a declared purpose of conservation, should be enacted to stop the waste of gas, the loss of its content of gasoline, *and the even greater loss incident to reduction of gas pressure in the oil sands*" (p. 24, italics ours). In the second report of the Federal Oil Conservation Board filed with the President January 16, 1928, it is said: "This fact that new oil pools are being drilled and drained more rapidly than ever before simply foreshadows more sharply the ultimate fact that the time may come when substitutes for motor fuel may be necessary" (p. 2). The remainder of this report constituted an inquiry of the Board into substitutes for petroleum motor fuel.

The following excerpts are taken from the third report of the Federal Oil Conservation Board to the President, dated February 25, 1929: "The excess production commented upon by you when you created the Board in December, 1924, unfortunately continues" (p. 1). "* * * Larger proportions of the oil are being recovered from the sands;

the true function of gas in bringing the oil to the well and to the surface is being appreciated and utilized. And, perhaps best of all, is the definite trend toward co-operative methods in developing and operating new fields and in rejuvenating old fields. (p. 2.) * * * Fortunately, for the public interest, the trend in operating policy of the stronger companies has been definitely in the direction of conservation; immediate development of a field no longer always follows its discovery; offset agreements have slowed developments in proved areas. Flush flow has been prorated to prevent falling of markets with consequent loss to producers both large and small, and the present shut-in production is of volume never approached in previous years. All this is accomplishment that affords the best evidence of the possibility of a high degree of self-regulation in the business of bringing oil to the surface (p. 2). * * * The possibility of unrestrained individual action in what should await regulated community action still remains a menace to the present stabilized rate of production. * * * This natural conflict in thought between the intense individualists and the forward-looking leaders, together with the present threat of competitive and intensive producing have prompted the Committee of the American Bar Association to draft legislation, later referred to in this report, invoking the police power of the state to regulate the correlative position of the parties in interest in conserving an irreplaceable and indispensable natural resource. Plainly, the essential factor in handling underground reserves of oil, admittedly the most economic form of storage, is full co-operation in unit (pool) control, whether by voluntary

agreement or by state enforcement (p. 3). * * * In line with a recognized need for uniform state legislation that might permit co-operative or unit development and operation of oil and gas pools for the purpose of preventing waste, the committee on conservation of mineral resources of the American Bar Association, Section of Mineral Law, has pursued the study and submitted its report supplemented by a draft of two laws for state enactment. One measure would legalize voluntary agreements for economic purposes and conservation by removing the obstacles imposed by state anti-trust laws; the other measure would provide for compulsory unit and co-operative development and operation by invoking the police power of the state. * * * Your Board regards this report from the Committee of the American Bar Association as of such present significance and permanent value that its inclusion here as Appendix "b" (p. 26) is fully warranted." (p. 4)

In the last report of the Federal Oil Conservation Board made to the President that is available to us (Report IV of the Federal Oil Conservation Board to the President of the United States, May 28, 1930), it is said: "It matters not whether the oil reserves of the United States are five times a billion barrels or twenty times a billion barrels, *the supply is limited and cannot be increased.* Even the most generous estimates place the date at which our oil reserves will be practically depleted *under present rates of consumption in the comparatively near future.* In the interests of national defense and industrial prosperity, t h i s generation should not be permitted to waste this irreplaceable natural product and thus serious-

ly handicap future generations of America." (p. 8, italics ours.) The Board then proceeded to stress the importance of gas energy and to condemn the intense and competitive drilling and operation of the separate tracts in an oil pool as a practice inimical to the correlative rights of the owners in the pool and to the public interest. It is said: "There has also been a widespread realization of the importance of natural gas in its function as a propulsive agent in the production of oil (p. 15). * * * The natural unit in oil deposits is the single pool, large or small, and unit operation is in essence nothing more or less than accepting nature's decree and seeking to work in harmony with it (p. 18). * * * Over-production of any commodity is uneconomic and if it involves depletion of a supply that cannot be replaced, over-production and the consequent wastefulness effect a permanent injury. Especially is over-production in the oil business a *public menace* by reason of the unnatural and unfair competition between co-owners within the same natural unit. It is this individualistic strife characterized by haste and waste that has been a large factor in inciting over-production in the past (p. 18, italics ours). * * * The co-operation implied in the unit operation plan thus makes far more rational production than the present uneconomic drilling and pumping, but this co-operation within the pool *does not preclude competition between pools or fields.* The community of interest and action involved in unit operation stops at the natural boundary of the oil pool (p. 19, italics ours). * * * The unit idea in producing oil is bound to win out because the natural unit is the oil pool. Man may draw property lines on the

surface making a checkerboard for title searchers and lease lawyers to play on, but nature has fixed a boundary line around the underground deposit for geologists to discover and engineers to use in the development of the hidden resources. The unit operation plan is a back-to-nature movement. Codes of laws and judicial decisions relating to oil deposits have accorded to the surface checkerboard a sanctity beyond its deserts, while the facts of nature *as now known,* have received little attention and have commanded less respect (p. 19, italics ours). * * * Of more recent date than the general understanding of this underground movement of oil, after drilling has started, is the *tardy realization* of the function that gas plays in winning oil for the use of man. The natural gas associated with the oil in the pool largely determines its mobility and controls its movement to the well and to the surface. Deplete this gas supply and reduce the pressure, and recovery of some part of the oil content of the pool becomes more difficult, or even impossible, and to that extent the other owners are deprived of what is rightfully theirs (p. 21, italics ours). What is needed now to effect this conservation movement is specific recognition by the courts of this community of interest, by all the land owners in the content of the oil and gas pool, in the oil and gas as separate marketable commodities, *and in the energy in the gas, the pressure so easily dissipated, but so essential to an adequate recovery of the oil included in the minute pores of the sand, or sandstone, that forms the reservoir.* It is this loss of pressure which profits no one and damages all that takes on the character of a legal nuisance against which owners in the common reser-

vior should be protected. *Impairment, or loss of the natural agency that controls the 'reduction to possession' of the oil beneath the surface of the proprietor's land is in effect taking his property* (p. 22, italics ours). * * * The difficulty in putting the plan into effect is the large advantage that *a single owner of a small surface holding may now seize for himself under the rules of the game as at present supported by a well-aged judicial opinion.* Repeatedly, proposals for agreements between property owners to promote the efficient and economic handling of their common property in protection of their mutual rights have been vetoed by a small minority of the parties in interest. *For these reasons the Federal Oil Conservation Board early urged the formulation and adoption of remedial measures permitting a better correlation of underground property rights.* Some affirmative action by either court or legislature, whereby the co-equal rights of all the owners may be recognized and protected, is sorely needed, *and this regulatory action may well be predicated on the magnitude and gravity of the public interest involved.* The principle of justice between owners would seem to be incentive enough, but if more grounds for action are required, good technology and good economics amply justify the acceptance of unit operation as in the public interest'' (p. 23, italics ours).

The solicitude of the President regarding our future supply of petroleum, as expressed in his letter constituting the Federal Oil Board, the exhaustive investigations of that Board by reason of the responsibility assigned to it, its reports embodying its conclusions and recommendations based upon its investigations, and the sanction of Congress,

as manifested by the appropriations for the use of the Board, indubitably point to the announcement of a new national public policy of supreme concern to all the people of the United States. That policy, from the viewpoint of the public interest, finds its absolute vindication in the following propositions, drawn from the letter of the President and from the excerpts from the reports of the Federal Oil Conservation Board already set forth:

(1) Petroleum is an irreplaceable natural resource.

(2) This being true, our supply for future use, whether great or small, is necessarily limited.

(3) We cannot determine the extent of our future supply as we may do and have done in respect of the solid minerals. New discoveries will be fortuitous. The quantity of oil that may be recovered from existing fields is uncertain, and the quantity that may be recovered from new fields is shrouded in even greater uncertainty.

(4) The foregoing considerations reveal their complete significance when we add thereto two further facts. An adequate supply of petroleum and petroleum products is indispensable to the national security, and equally so to our whole industrial fabric, and to the welfare of the people in their economic and social life. This phase of the case is stressed by the President and it is repeatedly emphasized in the utterances of the Federal Oil Conservation Board.

(5) Based upon the considerations above mentioned, the President, in his letter, and the Federal Oil Conserva-

tion Board throughout its reports, emphatically voice the alarm these high officials feel regarding the possibility, if not the probability, of a petroleum shortage in this country in the comparatively near future.

(6) From the above, logically it follows that it should be the public policy of the United States to conserve the petroleum resources of our country. Our petroleum reserves should be drawn on as needed, but every kind of waste incident to the production of oil should be prohibited to safeguard, to the extent possible, our supply for the future.

(7) The kind of waste now generally occurring in the business of producing oil which the Federal Oil Board in its several reports consistently explains and condemns is the waste or inefficient use of the gas energy of the oil pools of the country. The force that lends mobility to the oil propels it to the well opening and lifts it to the surface for beneficial use. It is pointed out that the waste or inefficient use of gas energy leaves oil in the ground that should be recovered through the proper and non-wasteful utilization of the gas energy.

(8) The Board, as a corollary to the above proposition, finds (and scientific opinion in the oil industry supports that finding abundantly if not universally) that the gas pressure or energy in an oil pool, by reason of its essential nature, functions in respect of the pool as a whole and not in respect of the separate surface holdings into which the pool may be divided. Where the gas energy is permitted to function as nature intended,

and where the operation is efficient and without waste, the percentage of oil recovery is infinitely greater than when each operator, through his own tract within the pool, seeks to gain as much of the oil of the pool as possible, which is but another way of saying that he gains a disproportionate share of the gas energy for his own oil producing purposes, a practice almost invariably attended by the improper use and waste of the gas energy.

(9) Whatever the holdings of the American courts may be regarding the ownership of oil and gas in place, or the exclusive right of a surface proprietor through wells on his own land to capture all the oil and gas that may be produced therefrom, regardless of the effect on the neighboring proprietors, it is only in the very recent cases involving the constitutionality of conservation statutes that the full significance of the pool function of gas energy has been pressed upon the courts. The Federal Oil Board, in advancing the cause of petroleum conservation in the public interest, takes the position that the pool effect of gas energy calls for the laying down of a new legal concept based upon later scientific discoveries. This is by no means a novel procedure, especially where constitutional questions are concerned. The Federal Board has concluded that the gas energy of an oil pool, by reason of its general effect throughout the pool for oil producing purposes, is the common and not the individual property of the surface proprietors. The Board further concludes that if this community of ownership is once recognized distinct and

far-reaching correlative rights and obligations between and among the surface proprietors regarding the use or the waste of their common property necessarily will arise.

(10) It is because of the communal character of the gas energy in an oil pool that the Federal Oil Board reaches the ultimate conclusion that there is broad scope for the exercise of the police power of the oil producing states to adjust and regulate the correlative rights and obligations that result from this community ownership. IN PRESENTING THIS BRIEF IN THE PUBLIC INTEREST, OUR ARGUMENT WILL BE CENTERED UPON THE COMMUNAL NATURE OF GAS ENERGY AS A BASIS FOR THE EXERCISE OF THE POLICE POWER OF THE STATE OF OKLAHOMA AS EVIDENCED BY THE STATUTE CHALLENGED BY THE APPELLANTS IN THIS CASE.

Having thus outlined the national public policy that is involved in the questions presented in these cases, that policy must be correlated with the public policy of the oil producing states so that the application of the Oil States Advisory Committee for leave to file this brief shall find its justification upon the ground of public interest. In the broader sense, the national public policy and the public policy of the oil producing states in respect of regulating the production of oil to prevent waste are identical. The Federal Oil Board, in its first report, clearly discerning the division of governmental power between the nation

and the states, and doubting the power of the federal government to regulate the production of oil from lands privately owned in the states, declared that the exercise of state power was preferable. (Report I, Federal Oil Conservation Board, September 6th, 1926, page 15.) In the same report, the oil states are not only urged to enact conservation statutes, especially designed to prevent the waste of gas energy, but the several oil producing states are also urged to co-operate among themselves and with the federal bureaus to this end (p. 5). In December, 1927, the Federal Oil Board appointed a Committee of Nine, consisting of three federal government representatives, namely, the Assistant Secretary of the Interior, the Assistant Secretary of Commerce, and the Chairman of the Federal Trade Commission, three former presidents of the American Petroleum Institute, and three members of the American Bar Association, nominated by the Mineral Section of that body, with the approval of the American Bar Association, to assist the Federal Oil Board in its investigation of the practical and legal problems of petroleum conservation. This report was filed with the Federal Oil Board January 28, 1928, and among the recommendations made was the study of state legislation to prevent gas waste. This report was referred to the governors of the oil producing states by the Federal Oil Conservation Board. (Report III, Federal Oil Conservation Board, Feb. 25, 1929, pp. 4-9-17).

Doubtless influenced by the appeal of the Federal Oil Board and motivated also by his own knowledge of the waste of our petroleum reserves, Governor William H. Murray, of Oklahoma, called a meeting of the governors of

certain oil states, or their representatives, to be held at Fort Worth, Texas, March 1, 1931, looking to co-operation among the oil producing states for conservation. This meeting was attended by Governor Murray of Oklahoma, Governor Sterling of Texas, the conservation officers of Oklahoma and Texas, and the representatives of the Governors of Kansas and New Mexico. From this meeting came the organization of the Oil States Advisory Committee at Texarkana, Texas, March 9, 1931, the Governors of seven oil producing states, namely, Oklahoma, California, Kansas, Wyoming, Louisiana, Arkansas, and Texas, having appointed representatives on said Committee. Later, the Committee was enlarged to include representatives of the Governors of the States of Ohio, New Mexico, and Colorado. Since the Committee was fully constituted, it, in co-operation with the Federal Oil Conservation Board and the conservation authorities of the states represented on the Committee, has labored to advance the cause of petroleum conservation throughout the United States, and in particular in the states represented upon the Committee.

In the meanwhile, by act approved March 16, 1931, the Kansas legislature adopted an act prohibiting the production of crude petroleum in such manner and under such conditions as to constitute waste, and the term "waste" was defined so as to include underground waste, and waste of gas energy. Where oil could be produced only under conditions constituting waste, ratable taking from the pool affected was provided for (Kans. S. L. 1931, pp. 332-333). By act approved June 4, 1931, the California legislature prohibited the production of crude petroleum in the State of

California in such manner and under such conditions and in such amounts as to constitute or result in waste. The waste prohibited, as defined in section 2 of the act, was as follows:

> "*Sec. 2.* The term 'waste' as used herein shall include underground waste or destruction without beneficial use, surface waste or destruction without beneficial use, waste by reduction of the total quantity of recoverable crude petroleum oil in any underground source of supply by the careless or improper drilling or operation of wells, and the waste incident to or resulting from the production of crude petroleum oil when the current production together with the amount of crude petroleum oil and/or its refined products in storage exceeds the current requirements for use within and for shipment to points without the state, and for the maintenance in storage of such reserves of crude petroleum oil and/or its refined products as are reasonably necessary to meet and insure the continuity of an adequate supply of crude petroleum oil and/or its refined products for such current requirements as determined upon the basis of past experience, existing conditions and estimated future requirements of crude petroleum oil and its refined products for such use and shipment. The loss by evaporation or leakage and the increased hazard of loss from fire and other causes resulting from the storage of crude petroleum oil and/or its refined products in excess of the quantities which are reasonably necessary to insure continuity of an adequate supply for such current requirements is waste within the meaning of this act." (Statutes and Amendments to the Codes of California 1931, pp. 1267-1272, inc.)

By act approved August 12, 1931, the Texas legislature enacted a conservation statute providing that neither nat-

ural gas nor crude petroleum shall be produced, transported, stored, or used in any such manner, or under such conditions as to constitute waste. This provision was followed by this language:

> "As used herein, the term 'waste,' in addition to its ordinary meaning, shall include the operation of any oil well, or wells, with the gas/oil ratio exceeding that fixed for such well, or wells, by order of the Commission, and the Commission is hereby given authority to fix and determine by order such ratio. *(g)* Actual physical waste incident to or resulting from so drilling, equipping, *locating, spacing,* or operating wells *as to reduce or tend to reduce the ultimate total recovery of crude petroleum, or natural gas, from any well or pool. (h)* Waste incident to or resulting from the unnecessary, inefficient, excessive, or improper use of the gas, *gas energy,* or water drive in any well or pool. * * * *(k) Waste incident to the inequitable utilization of gas energy,* water drive, or other natural force resulting from the inequitable withdrawing from any common pool; *provided, however,* that the Commission shall only invoke this definition of waste for the purpose of preventing discrimination in production as between producers disposing of their oil and/or gas by means of regulated carriers and those producers disposing of their oil and/or gas by means of unregulated carriers." (Sec. 1, Ray's Advance S. L., Texas, Vol. 5, pp. 42-43, italics ours.)

By section 7 of the act, the Railroad Commission of Texas is given the power to establish rules and regulations to prevent the kind of waste condemned by the act and, here the further provision occurs:

> "If it is the judgment of the Commission that any reduction or adjustment in the production of oil or

gas from any well or pool is necessary in order to prevent the waste, as herein defined, of crude petroleum, or natural gas, from any such well, or pool, the Commission shall determine how to accomplish such reduction or adjustment, and such order shall be made in such manner as to distribute, prorate or otherwise apportion such reduction, or adjustment, among the wells committing such waste, or contributing thereto, as the facts justly and equitably require." *(Id.*, p. 46.)

The Oklahoma statute assailed here prohibits the ordinary waste of petroleum, the underground waste thereof, and the waste incident to the production of petroleum in excess of transportation and marketing facilities or reasonable market demands. The California statute, already referred to, with unimportant distinction, looks to the accomplishment of this same purpose. On the theory that the waste of gas energy constitutes perhaps ordinary waste, and certainly underground waste, and waste incident to the production of oil in excess of transportation and marketing facilities and reasonable market demands, the Kansas and Texas statutes, particularly the latter, with its nice treatment requiring non-wasteful and equitable use of gas energy, may be analogized to the Oklahoma statute challenged here, and hence, it comes about that the appellant's assault of the Oklahoma statute challenges also the constitutionality of the latest effort made by the three important oil producing states of Kansas, California, and Texas, to prevent waste and to conserve the vast oil resources of these states for the benefit of the American people.

In short, these cases, if not sustained, either will strike down or seriously impede the carrying out of our national

conservation policies, the efforts of the oil producing states in the same direction, and the conservation statutes of the four most important oil producing states in the American Union—states now producing 86.48 per cent of the nation's supply of crude oil, as shown by the latest figures of the Bureau of Mines. (American Pet. Institute Bulletin, Feb. 27th, 1932.) It is because of these things that the Oil States Advisory Committee, at a meeting held in Chicago November 12th, 1931, by resolution, delegated to the legal subcommittee of the Oil States Advisory Committee the duty of filing a brief on behalf of the Committee *amici curiae*, the counsel filing this brief being the Oklahoma member of the Oil States Advisory Committee, and the lawyers of counsel being respectively the Colorado and the Ohio members thereof.

(c) Statement of the Case.

Counsel for appellant, in their brief, have stated the case rather fully, but clearly from their point of view of the applicable law. Counsel for appellees have submitted a counter statement, controverting appellant's statement in certain particulars and supplementing it in others. In the circumstances, and to serve as a more impartial recital of the record, we propose to restate the case and for the sake of clearness to divide it into three parts.

(A) The Relative Situation of the Parties: Appellant is a New Mexico Corporation, authorized to do business in Oklahoma. The principal appellees, Walker, Childers, and Hughes, are members of the Oklahoma Corpora-

tion Commission. (R. Vol. 1, part 2, p. 177.) While the parties last named are the formal defendants, the inescapable fact remains that back of the defendants are fifty-two oil operators in the Oklahoma City field who are obeying the restraint orders that are assailed by the appellant here. Appellant claims that the Oklahoma Conservation Law and the restraint orders of the Oklahoma Corporation Commission made thereunder, are unconstitutional and void in that they violate the Fourteenth Amendment and the Commerce Clause of the Federal Constitution. Appellant asks that the appellees, on these grounds, be enjoined from enforcing the act and the orders made thereunder. (R. Vol. 1, part 1, p. 35.) Appellant is what is termed an integrated oil concern. It produces and transports crude petroleum by pipe line, refines it, and markets the products of its refinery in intrastate and interstate commerce, the larger quantity of its refined products going into interstate commerce. (R. Vol. I, part 2, p. 178.) At this stage, an observation that penetrates appellant's whole case must be drawn. Appellant, in the main if not entirely, predicates its case upon its integrated character. It combines its producing, transporting, refining and marketing departments into a single enterprise and complains that, as a single enterprise, it is deprived of its property without due process, and that the Oklahoma Conservation Law and the orders of the Corporation Commission made thereunder offend the Commerce Clause. Such is not the predicament of this case. The Oklahoma Conservation Act and the orders of the Corporation Commission challenged here apply to a single branch of the petroleum business—that of producing oil. So

far as the record here is concerned, appellant occupies the position of a producer of oil, and that alone. All of its other business activities must be disregarded. So far as the record in this case is concerned, appellant's business falls into a single category, that of producing oil, a matter of local and not of national significance.

Appellant holds oil leases in the town-lot section of the Oklahoma City oil field on twelve non-contiguous tracts. The smallest covers .16 of an acre. Two others cover one-half acre tracts. The largest tract covers five acres. The area of the remaining tracts ranges between the two extremes here indicated. (R. Vol. I, part 2, pp. 179-180.) At the time of trial, appellant had nine producing wells on these tracts and was drilling another, the average well location covering three and a half acres. (R. Vol. I, part 2, pp. 179-181.) Standing in sharp contrast with the small holdings and intensive drilling operations of appellant, when correlative rights are taken into account, is the fact that the Oklahoma City field covered 10,000 acres of productive territory (R. Vol. I, part 2, p. 346), and that at the time of the trial below there were 746 producing wells in the Oklahoma City field. (R. Vol. I, part 2, p. 184.) In other words, the average well location in the Oklahoma City pool, after taking into account appellant's small locations, was over 10 acres to the well. Of even more compelling significance, when the producing activities of the appellant and the other operators in the Oklahoma City field are brought into contrast, are these facts: The estimated oil content per acre of appellant's McCalep No. 1, located on a tract less than one-half acre in area, was 33,000 barrels.

In less than one year, namely, from September 30, 1930, to June 25, 1931, this well produced 254,509.26 barrels; in other words, about sixteen times the estimate of recoverable oil per acre in that locality. Appellant's Naden No. 1 was drilled on a tract of one-half acre in area, and the amount of recoverable oil per acre attributed to the locality was 27,000 barrels. In five months preceding the trial, this well had produced 225,913.04 barrels, or something less than eighteen times the quantity attributed to this well. Seal No. 1 and No. 2, belonging to the appellant, were located on a five-acre tract. The first of these wells had an estimated recovery per acre of 13,000 barrels and the second a recovery of 7,500 barrels per acre. In the four months preceding the trial, these two wells produced in excess of 157,000 barrels. At the time of the trial, all of these wells were yet capable of producing large quantities of oil. The history of appellant's other wells, the estimated recovery per acre, and the quantity of oil actually produced therefrom, does not appear in the record. (R. Vol. I, part 2, pp. 181-182.)

In the period preceding the trial, appellant had taken 300,000 barrels of oil from the four wells above mentioned in excess of the quantity it was permitted to produce under the orders of the Corporation Commission. (R. Vol. I, part 2, p. 182.) From these considerations, it follows that appellant had taken large quantities of oil from lands not belonging to it and had used the gas energy of the oil pool, to which it had access, in a wholly disproportionate manner to produce this excessive quantity, and that, aside from the natural equities between it and its neighbors resulting

from the circumstances just mentioned, it had produced 300,000 barrels of oil from its wells above the limitation of the Corporation Commission orders, all to the serious detriment of its neighbors in the Oklahoma City pool, to whom it owed reciprocal and correlative obligations not only in respect of the oil to be recovered, but in respect of the gas energy that had to be utilized to produce the oil.

(B) ORDERS OF THE CORPORATION COMMISSION: As the taking of property without due process always raises the degree of regulation and restriction, the first point to observe as shown by the record is the limited period within which the orders of the Corporation Commission complained of by appellant were operative. They were not only limited to the brief period of three months each, but provision was made for a re-adjustment of the limitation within the three months' period should new evidence show that the demand had been increased. (R. Vol. I, part 2, p. 97; R. Vol. I, part 2, pp. 112-116; R. Vol. I, part 2, pp. 138, 145-146; R. Vol. I, part 2, pp. 161-162; R. Vol. I, part 2, pp. 173-179.) As the order of June 30, 1930, fairly is typical of all the other orders attacked by appellant, the substance of this order will be here given. The order begins: "Comes now Wirt Franklin, petitioner herein, by his counsel, and this matter being set for hearing on this date, and the Commission having heard and considered the evidence of the petitioner, *and the evidence of any and all persons interested in said petition, and being advised in the premises, finds as follows:* (Italics ours.) (R. Vol. II, part 2, p. 85.) * * * That due notice of the hearing had been given. (R.

Vol. II, part 2, p. 86.) * * * That there is an over-production of crude oil in the State of Oklahoma attended by waste of gas and of gas pressure, and that the producers of crude oil * * * unless restrained, * * * (will) commit physical waste of crude oil, economic waste, under-ground waste, surface waste, and waste incident to the production of crude oil in excess of transportation or marketing facilities, or reasonable market demands. (R. Vol. II, part 2, p. 86.) * * * That in order to curtail the production of crude oil in Oklahoma, in a manner to prevent the commission of waste, it will be necessary to enforce proportionality of taking from the wells and leases in the flush and semi-flush pools, and unless proportionality is required, injustice would be done as between producers in the same pool * * * in that drainage would occur from one lease to another and undue proportion of the gas pressure would be utilized by some operators to the detriment of the others. (R. Vol. II, part 2, pp. 87-88.) * * * That the potential production of crude oil from existing wells in Oklahoma on and following the first day of July, 1930, will be approximately 1,362,000 barrels per day, and that the daily demand from Oklahoma is and will be approximately 650,000 barrels per day during the months of July, August, and September, 1930. That, therefore, there is an excess of potential production over consumption of 712,000 barrels per day, which cannot be produced without waste, as defined by the Statutes of Oklahoma." (R. Vol. II, part 2, p. 88.) The Commission found that a different percentage of reduction should be applied to the several oil pools brought under the order. (R. Vol. II, part 2, pp. 89-90.) That the wells of

small settled production should not be limited because to do so would cause the abandonment of thousands of them, thus causing the waste (economic waste) of a valuable natural resource. (R. Vol. II, part 2, p. 92.) That the application of different percentages of reduction was necessary because the several pools subjected to the order possessed their peculiar and separate markets. (R. Vol. II, part 2, p. 92.) That the varying percentages of reduction were necessary to prevent discrimination between and among the pools subject to the order. (R. Vol. II, part 2, p. 93.) Upon the basis of these specific findings, the Corporation Commission, by its rules and regulations, and in the order embracing the findings, put the findings into effect as a restraint upon production to prevent waste. (R. Vol. II, part 2, p. 95.)

Especially illuminating on the sheer matter of waste as the basis of the orders attacked is the opinion of WALKER, Chairman, in the Order of February 10, 1931 (R. Vol II, part 2, p. 190). Upon the matter of economic waste, the Commissioner said:

> "Economic waste, so far as this hearing is concerned, is too closely allied to physical waste to permit intelligent severance therefrom. Thus, one of the protestant's chief objections to increasing the allowable takings from the Oklahoma City field is based on the claim that such increased takings would tend to absorb markets which are now caring for the small, or so-called stripper wells, generally estimated at from 30,000 to 60,000 wells in the State of Oklahoma, dependent upon the definition of a stripper well, and the amount of crude petroleum that would designate a

well within that class. In any event, it is contended that a flood of oil from the Oklahoma City pool would disastrously affect some 60,000 wells in the state, outside the Oklahoma City pool, and would close many of them down for a long time, and that during this time these wells would, because of water and other damage, become in such condition that their operation would no longer be practical. This would constitute both physical and economic waste, physical in the sense of the destruction of valuable properties both to individuals and to the state, and economic, in the destruction of these properties and coincident injuries connected therewith, not only to the wells themselves, but to the state and its people." (R. Vol. 2, part 2, p. 194.)

In the same opinion Walker observed:

"Another, and an exceedingly important problem directly connected with the question of physical waste, but also bearing upon the question of economic waste and the ultimate recovery of the field (underground waste), is the question of natural gas wastage in connection with the production of crude petroleum. A witness, a competent petroleum engineer, testified that if the wells in the Oklahoma City field were opened to ten per cent capacity daily flow (under this order they were opened to a lesser flow) assumably based upon the Commission's estimated potential in its Order No. 5413, of nearly 6,000,000 barrels, there would be a production in the Oklahoma City field of approximately one and one-half billion cubic feet of natural gas, *the greater proportion of which would be blown into the air and dissipated.* (Italics ours.)

"Involved in this wastage of natural gas to an extent which to the layman's mind seems criminal and which to any mind ought to be conceded to be improvident, is the question of the *destruction of gas energy,*

the potent and necessary element or power in the recovery of crude petroleum. Oklahoma City wells are exceedingly deep, generally producing crude petroleum from a depth below 6500 feet, and the gas energy so necessary to their production, once dissipated, cannot be restored. The relationship of wastage of natural gas from these wells and the allowable takings of crude petroleum from the wells is an important and necessary one. We should not permit unlimited flow from these wells until we can be convinced that the natural gas energy is being conserved to the best advantage." (R. Vol. 2, part 2, pp. 195-196.) (Italics ours.)

(C) FINDINGS OF THE COURT BELOW. That each of the orders attacked by appellant was entered upon the proper application by petition of some interested person; the application was set for hearing, of which due and reasonable notice was given to all persons and classes interested therein, as provided in section 6 of the act; testimony was taken at the hearings on said applications, and the findings of fact upon which the regulations were based were made upon the evidence introduced at the hearings. The evidence taken by the Commission upon the various hearings was not introduced in evidence in this suit except an abstract of that part of the evidence taken at one of the hearings on the question of waste. *The abstract of the evidence before the Commission so introduced sustained the findings of fact thereon.* The allegations of the third amended and supplemental bill of complaint that the several orders complained of were entered and promulgated by the Commission without having heard the testimony of witnesses under oath, without having heard any sort of legal evidence upon which

to base said orders, and the findings of fact *were not supported by any evidence before it,* are not sustained by the evidence herein (R. Vol. I, part 2, p. 190). (Italics ours.)

That applicant owns a pipe line of 18,000 barrels a day capacity, running from its Oklahoma City properties to its Enid refinery. * * * There is no evidence that closing in, or pinching in wells in the Oklahoma City field will cause water to enter the oil and gas sand, or damage appellant's wells, or results in waste of oil or gas (R. Vol. I, Part 2, p. 182). * * * That to permit oil wells in flush or semi-flush pools to flow wide open for a considerable length of time results in the use of an excessive amount of gas pressure and uneconomic and wasteful use of gas energy in recovering and lifting the oil, and a tremendous loss in ultimate recovery. * * * The proper and economic utilization of this gas energy is of particular importance in a pool such as the Oklahoma City pool where the wells are of tremendous depth and the cost of artificial recovering and raising the oil will be unusually great (R. Vol. I, part 2, pp. 185-186). * * * That the orders of the Corporation Commission regarding the preservation of natural gas and gas pressure are established by the evidence (R. Vol. I, part 2, pp. 197-198). * * *

That the full production from the Oklahoma City field on the date of said order (October 28, 1930), and during the period of time covered thereby, and since then, and at this time, could not and cannot be produced without waste, including physical waste and waste incident to the production of crude oil or petroleum in excess of the reasonable market demand for oil therein and that in said order and

subsequent orders the Commission restricted the market demand for oil therein as then ascertained to exist and that the present restriction of the production of oil therein conforms to the amount of the reasonable market demand for oil produced therefrom (R. Vol. I, Part 2, p. 198). * * * That the Commission adjusted any inequalities in the orders which are challenged here (R. Vol. I, Part 2, p. 199). * * * That the time basis of proration in effect in the Oklahoma City field for a time was adapted to the circumstances of said field * * * (R. Vol. I, Part 2, pp. 201-202, 204). That the Commission, in none of its orders, has discriminated against the Oklahoma City pool in favor of any other prorated area (R. Vol. I, Part 2, p. 207). * * * That the varying percentages of limitation were justified because each pool had a different market (R. Vol. I, part 2, p. 207). * * * That none of the orders of the Corporation Commission have been made or entered into for the purpose of fixing or maintaining the price of crude oil (R. Vol. I, part 2, p. 209).

The following finding of the court below is inserted in full. It reads:

> "There was introduced in evidence an agreed narrative statement of the evidence before the Commission on the subject of waste. We find from said narrative statement that it was proved to the Commission and well established that the commission of both surface waste, underground waste, and waste incident to the production of crude oil in excess of reasonable market demands, would have occurred in each of the prorated pools in the absence of the making of the proration orders, and rules and regulations herein attacked by the plaintiff for the prevention of such wastes. We

find that the evidence before the Commission on the subject of waste clearly establishes that the commission of such wastes was immiment." (R. Vol. I, part 2, p. 210.)

• • • That the orders of the Corporation Commission ~~prohibiting~~ permit the flowing of wells in the Oklahoma City field open and continuously would cause serious underground waste. • • • This is also established by the evidence (R. Vol. I, part 2, p. 197).

On the question of inequality between the appellant and the other operators in the Oklahoma City field, the court below found that fifty-three different corporations and individuals were operating in the field, thirty-six of which were non-integrated, that is, entirely dependent on outside purchasers for a market, and eight were partially integated, therefore, partly dependent on outside purchasers for a market. Only nine of the fifty-three producers in the field were in the class of the appellant. They were in position to market all of their production, were it not for the restraint of the orders of the Corporation Commission. Thus, nine producers of the Oklahoma City pool owning 12 per cent of the wells therein and 10 per cent of the production therefrom, due to their peculiar situation, when that term has no meaning under the record of this case, could take advantage of the other forty-four producers owning 88 per cent of the wells in the field and 90 per cent of the production therefrom (R. Vol. I, part 2, p. 183).

The foregoing, in our opinion, states the record in its true perspective. The appellant is intent on serving its selfish interests, regardless of the effect of its action upon

its fellow-operators. To it, the Fourteenth Amendment is a sword, and not a shield. The subject-matter of the suit is property of a character that, by its very nature, establishes correlative rights and obligations among the producers in the same oil pool, if there is such a concept within the realm of American law; a legislative edict was enacted within the broad sphere of the police power designed to adjust and regulate these correlative rights and obligations, and an administrative body midst all the complexities the subject implies seeks to administer the law in order that equality and justice might be upheld; and, finally, a federal court of three judges, sitting in the atmosphere of these things, hearing testimony of the witnesses directly, and upholding in every important respect both the act and the orders of the Oklahoma Corporation Commission. In this setting, we shall proceed to the argument of the legal questions that are presented.

SUMMARY of ARGUMENT.

Point 1. Proper interpreation of the Oklahoma Conservation Act (Oklahoma Session Laws 1915, p. 28).

Point 2. When so interpreted this act does not offend the due process clause of the Fourteenth Amendment,—the equality and liberty of contract phases of appellant's contention under this heading will not be discussed.

Point 3. Section 2 of the Oklahoma Conservation Act, the price-fixing provision, clearly is separable from the waste provisions of the act, namely: Sections 1, 3, 4 and 5, which alone are material to this controversy.

Point 4. There is no such uncertainty in respect of the meaning of the terms "waste," "underground waste" and "waste incident to the production of crude oil and petroleum in excess of transportation or market facilities or reasonable market demands" as these terms appear in section 3 of the act as to render the act void on that ground.

Point 5. There was no delegation of legislative power by this act. The legislative prohibitions are clear and certain and the power conferred upon the Oklahoma Corporation Commission by the act was that of applying the standards of waste as established by the legislature to the peculiar facts of a case. In short, an administrative duty, nothing more, was imposed upon the Corporation Commission by the Oklahoma Conservation Act.

Point 6. The rules, regulations and orders of the Oklahoma Corporation Commission assailed by appellant here as unconstitutional and void clearly are within the provisions of the Oklahoma Conservation Act; hence it follows that all such proceedings of the Commission are immune from attack.

Point 7. The duties committed to, or discharged by the Proration Umpire and Operators' Committees, under the direction of the Oklahoma Corporation Commission, do not have the effect of invalidating the rules, regulations and orders of the Commission complained of by appellant in this case.

Point 8. Neither the Oklahoma Conservation Act, nor the rules, regulations or orders of the Oklahoma Corporation Commission made thereunder, the subjects of assault here, offend the commerce clause of the Federal Constitution.

ARGUMENT.

POINT 1.

Proper interpretation of the Oklahoma Conservation Act (Oklahoma Session Laws 1915, p. 28).

As this brief proceeds, it will be demonstrated that the rules, regulations and orders of the Oklahoma Corporation Commission challenged in this suit by appellant exclusively are based upon the waste provisions of the Oklahoma Conservation Act (Oklahoma Session Laws 1915, p. 28). Appellant, however, strains to connect section 2 of the act, a price-fixing provision, with the sections of the act dealing with waste, and upon that foundation much, if not all, of its case depends. We propose to interpret the waste sections of the act first to show that they, taken together, manifest a single legislative design and purpose. We shall then take up section 2 of the act, the price-fixing provision, to demonstrate that it has no connection whatever with the waste sections; that section 2 and the waste sections are not in any wise interdependent, but, on the contrary, that section 2, in its turn, manifests a legislative intent entirely separate and distinct from the prohibition of waste.

Having thus outlined our objective, we shall analyze the material sections of the statute. Section 1 provides:

> "That the production of crude oil or petroleum in the State of Oklahoma in such manner, *and under such conditions* as to constitute waste *is hereby prohibited.*" (Italics ours.)

This prohibitory section of the Oklahoma Conservation Law was followed exactly in the Kansas Conservation Law (Kans. S. L. 1931, p. 332). In California, by an act adopted after the Oklahoma act, the Oklahoma model was employed, but more comprehensive language used. Here the production of crude petroleum in the State of California in such manner, and under such conditions, and in such amounts as to constitute or result in waste, was prohibited. (Statutes and amendments to the Code of California 1931, p. 1267.) The Texas act also adopted after the Oklahoma act provided that neither natural gas nor crude petroleum shall be produced, transported, stored or used in any manner or under such conditions as to constitute waste. (Ray's Advance S. L. Vol. 5, p. 42.) Hence we have the impressive fact that in the main the prohibitory section of the Oklahoma act has been carried into the statutory law of three other oil producing states. The condemnation of waste in section 1 of the Oklahoma act is all-~~inclusive~~ inclusive. At a glance, the production of petroleum in Oklahoma in such manner as to constitute waste would forbid all kinds of waste, but the statutory intent went decidedly farther. The production of petroleum under conditions that brought about waste was likewise prohibited. This latter phrase is of high significance. Prohibiting production in such a manner as to cause waste would satisfy all the mechanical requirements for conservation, but another factor was added. Conditions existing at the time the oil was produced, that is, extraneous conditions, were to be taken into account, and if the production, plus these conditions, constituted waste, then that kind of waste was prohibited. At least, this much

must be conceded. Where the two concepts, manner of production and conditions at the time of production, are both established as standards to determine the existence of waste, the statute in the very nature of things must be given the very broadest application. This brings us to the related section dealing with waste, namely, section 3:

> "That the term 'waste' as used herein, in addition to its *ordinary meaning* shall include economic waste, underground waste, surface waste and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities, or reasonable market demands. The Corporation Commission shall have authority to make rules and regulations for the prevention of such waste and for the protection of all fresh water strata and oil and gas bearing strata encountered in any well drilled for oil."

We must arrive at the applicable meaning of this definition section by process of elimination. The Oklahoma legislature must be presumed to have enacted its conservation act in the light of the underground nature and habits of oil and gas, and of their physical association and relationship underground. This court also must take judicial knowledge of these conditions. Beginning our process of elimination, first we shall deal with the concept, "Economic Waste." Under the clear terms of the act, the words, "economic waste" bear no direct relation to price or price-fixing. That subject, according to a complete code of its own, is dealt with in section 2 of the act, and there only. On the other hand, the term, "economic waste," does bear a relationship to overproduction by reason of the nature of the business of producing oil. The Federal Oil Board has

found that one-half of the nation's oil supply comes from the small wells of settled production which number over 300,000. There is a price level that determines the continued operation or the abandonment of these wells. Therefore, an acute and prolonged overproduction coming from flush and semi-flush fields that undermines the economic price which alone will sustain the operation of the small wells of the country, not only threatens, but actually brings about an abandonment of thousands of small wells, thus leaving in the ground oil that otherwise would be recovered. This is an outright economic waste, and while the concept has an indirect relation to price, its basic import is to sustain a condition that will save the small wells of the country which from every point of view constitute the backlog of our oil supply.

The term, "surface waste" doubtless would embrace these elements: *(a)* The actual dumping of produced oil on the surface without use. *(b)* The storing of produced oil in earthen receptacles, that is, in drains or ditches that were dammed for the purpose, or in excavations dug for the purpose which would result in the seepage of oil into the earth that never could be recovered for use. The deterioration of the oil thus stored through the high percentage of evaporation in respect of the more volatile and valuable content, and in time of heavy rains the overflowing of the earthen receptacles of whatever character upon the land or into neighboring streams with the actual physical loss of oil that would result. That these elements of waste had already been encountered by the Oklahoma Cor-

poration Commission, and that they were in the minds of the Oklahoma Legislature when the Conservation Act under consideration here was passed, clearly appears from appellees' brief. *(c)* The storage of oil above ground in steel tanks. At the time of the passage of this act, it was not the custom to make tanks of this character gas tight. It is doubtful if any gas tight steel tanks were in use in Oklahoma at the time. In these circumstances, a substantial loss of the lighter parts of the stored oil was inevitable. Now gas tight tanks are in very general use, but there is still a degree of loss by evaporation. The record is not clear regarding the extent of this.

The terms "ordinary waste" and "underground waste" are so related according to our theory of this case that they may be treated together. Plainly enough, the term "ordinary waste" would include the actual destruction before beneficial use of any article of economic value. As a corollary, the term equally should include failure to obtain for use an article of economic value. The case, as a matter of waste, becomes infinitely stronger when the failure to produce the article results in such a condition that it can never be recovered for commercial use. The term "ordinary waste" must have a relative meaning, and the above reasoning is strongly fortified when we remember that we are dealing with a natural resource that cannot be replaced, the supply of which is limited. Dealing then with the concept "ordinary waste" in its relative significance, we are brought to the function of the gas energy of an oil pool which, if wasted, or if inefficiently used, leaves oil in the ground that cannot be recovered, but which would

have been recovered by the non-wasteful and efficient use of the gas energy of the pool. In these circumstances, we think there is solid ground for contending that the waste, or inefficient use of gas energy, constitutes ordinary waste within the meaning of this act. But we are not obliged to rest our case here. Underground waste, as such, specifically is prohibited by the act. Now, what, in the sense employed here, does the term "underground waste" mean? It does not refer to the mechanical processes that should be employed for the protection of the saturated oil and gas formations when penerated by wells, because that kind of conservation expressly is taken care of in the last part of the section under consideration, and in the following language:

> "The Corporation Commission shall have authority to make rules and regulations * * * for the protection of all fresh water starta (a matter not related to oil) and *oil and gas bearing strata* encountered in any well drilled for oil."

So the matter comes to this: Underground waste means exactly what the two words employed in the phrase connote, namely: Underground waste refers to the leaving of oil in the ground that in the natural circumstances of the case could be recovered for commercial use. *A priori*—if the leaving of oil in the ground is the thing condemned, we paraphrase section 1 of the act in the following language: The production of crude oil or petroleum in Oklahoma, in such manner, or under such conditions, as to leave underground substantial quantities thereof that afterwards cannot be recovered, is hereby prohibited. If then, the waste

of the gas energy of an oil pool, or even the inefficient use thereof, causes underground waste in the sense developed here, this manner or method of improvident production falls within the prohibitions of the Oklahoma Conservation Act.

The waste definition of section 3 dealing with reasonable market demand is a dependent and not an independent provision. Here we do not have a positive legislative declaration that the mere production of oil in Oklahoma in excess of reasonable market demand is prohibited. Here again the concept "waste" rather than the concept "overproduction" controls. It is only when waste as defined in the statute results from or grows out of excess production that the clause "relating to market demand" becomes operative. But this precisely is the condition shown by the record. As a foundation for the rules, regulations and orders of the Corporation Commission assailed here, the Commission found that the following kinds of waste were being committed. *First*, surface waste. *Second*, economic waste in the sense that small wells throughout the state were being abandoned because of overproduction and, finally, and with greater emphasis, that underground waste, as above explained, was being committed. The court below, after full hearing, affirmed these findings. It matters not that there may be some ground for saying that both the Corporation Commission and the court below dealt with excess production, as a type of waste condemned as such by the statute. Even on this point, the record clearly does not support the appellant. The substantial thing is *that both the Corporation Commission and the court below found*

the types of waste specifically condemned by the act were being committed; that they were the result of excess production and that the limiting of production to reasonable market demands would prevent such waste. Thus the whole purpose of the Oklahoma Conservation Act was carried out.

We turn now to section 4 of the act which reads:

> "*Section 4.* That whenever the full production from any common source of supply of crude oil or petroleum in this state can only be obtained under *conditions constituting waste, as herein defined,* then any person, firm or corporation, having the right to drill into and produce oil from any such common source of supply, may take therefrom only such proportion of all crude oil and petroleum that may be produced therefrom, *without waste,* as the production of the well or wells of any such person, firm or corporation, bears to the total production of such common source of supply. The Corporation Commission is authorized to so regulate the taking of crude oil or petroleum from any or all such common sources of supply, within the State of Oklahoma, as to prevent the inequitable or unfair taking, from a common source of supply, of such crude oil or petroleum, by any person, firm or corporation, *and to prevent unreasonable discrimination in favor of any one such common source of supply as against another.*"

This section deals exclusively with waste and is but a part of the waste scheme of the act as already manifested in sections 1 and 3 thereof. In interpreting section 4, we must remember the migrating propensities of oil and gas underground, and particularly, the pool effect of gas en-

ergy. By combining sections 1 and 3 the production of petroleum in excess of the reasonable market demand is prohibited when the effect of such excess production is to cause waste. But a restraint of this character immediately brings into the matter the correlative situation of the operators producing from the same pool. The inequalities that would result from the enforcement of sections 1 and 3 are corrected by section 4. Under this section where there is excess production, and that excess production results in waste, no operator may take more than his share of the oil production *and, in consequence,* utilize no more than his share of the gas energy of the pool for producing purposes. This thought is emphasized by the later provision of the section:

> "The Corporation Commission is authorized to so regulate the taking of crude oil or petroleum from any or all such common sources of supply within the State of Oklahoma as to prevent the *inequitable or unfair taking from a common* source of supply of crude oil or petroleum by any person, firm or corporation."

Thus far section 4 deals with the prorating of production in a single pool. The section concludes:

> "' ' ' to prevent unreasonable discrimination in favor of any one such common sources of supply as against another."

What does this last phrase mean? When sections 1, 3 and 4 are considered together up to the point of the quotation just made, they deal with the several oil pools of the state as separate units in the matter of waste. Especially is this true in respect of the limiting of production to reasonable market demand to prevent waste. The nature of the subject-

matter dealt with necessitates this separate treatment. Logically, proration should be enforced only in respect of an oil pool where all the production therefrom cannot be marketed because of the interdependence of the operators in that pool upon the available market. Furthermore, the record in this case clearly shows that each oil pool has its peculiar market outlet. All purchasers do not serve all the pools and even where they do, the extent of their facilities to take the oil vary as between the pools. Hence, we have the meaning of the phrase last quoted. Each separate pool is to possess its own market and there shall be ratable taking within each pool where excess production therefrom results in waste. Finally, then, the unreasonable discrimination between and among pools here forbidden simply means that when the Corporation Commission of Oklahoma shall limit production under this act, its orders in a reasonable way shall preserve for each separate pool its actual market and prorate that market among the several operators in the pool. The record shows conclusively that this is exactly what the Oklahoma Corporation Commission did under the rules, regulations and orders assailed by the appellant here.

Section 5 is the concluding section dealing exclusively with waste, and we here insert it:

> "*Section 5. That for the purpose of determining such production, a gauge* of each well *shall be taken* under rules and regulations to be prescribed by the Corporation Commission, and said Commission is authorized and directed to make and promulgate, by proper order, such other rules and regulations, *and to em-*

ploy or appoint such agents, with the consent of the Governor, as may be necessary to enforce this act."

This section provides the machinery to enable the Corporation Commission to carry out the waste provisions of the act. Initially, to enforce ratable taking the gauge of all wells subjected thereto, is required. The record shows that this was done in all fields subject to proration under the rules and regulations of the Corporation Commission, except Oklahoma City. There, for a period as shown by the record, time proration was applied and later, a four-hour gauge was provided, and this limited gauge was taken as shown by the record because the production of the field was so far above the market outlet that this restricted gauge only could be taken. We maintain, however, that the taking of gauges to enforce proration was not the exclusive method provided by the act. This section reads:

> "* * * said Commission is authorized and directed to make and promulgate, by proper order, such other rules and regulations * * * as may be necessary to enforce this act."

In the Oklahoma City field, in providing for time proration, the Commission adopted the only method of proration applicable to conditions in that field. That method was adopted to enforce the act and, in the circumstances, was clearly within the provisions of section 5.

Heretofore, we have analyzed sections 1, 3, 4 and 5, all of which bear upon the subject of waste, are inter-related and provide a complete code for the prevention of waste, as such, in Oklahoma. We now quote section 2 which bears

no relation to waste, and which we contend is entirely independent of the waste sections of the act upon which the rules, regulations and orders of the Corporation Commission and the findings of the court below entirely were predicated.

> "*Section 2.* That the *taking* of crude oil or petroleum from any oil-bearing sand or sands in the State of Oklahoma *at a time when there is not a market demand therefor at the well at a price equivalent to the actual value of such crude oil or petroleum is hereby prohibited*, and the actual value of such crude oil or petroleum at any time *shall be the average value* as near as may be ascertained in the United States at retail of the by-products of such crude oil or petroleum when refined less the cost and a reasonable profit in the business of transporting, refining and marketing the same, and the Corporation Commission of this state is hereby (in) *sic vested with the authority and power to investigate and determine from time to time the actual value of such crude oil or petroleum* by the standard herein provided, and *when so determined* said Commission shall promulgate its findings by its orders duly made and recorded, and publish the same in some newspaper of general circulation in the state."

To demonstrate the isolation and independence of section 2, it is to be observed that section 1 prohibits waste, and that alone. Section 3 defines waste, and that alone. Section 4, providing for proration, operates upon conditions constituting waste, and upon no other basis whatever. Section 5 provides the machinery for enforcing the waste provisions. In section 2, the term "waste" is not at any time, or at any place, employed. It contains its own prohibitory provisions. It does not depend upon the general prohibi-

tion of waste set forth in section 1. This section, in its essence, does these things: Prohibits the taking of crude oil from Oklahoma at less than its actual value and then provides the machinery for the determination of this value. It is a price-fixing section, pure and simple, and is entirely independent of, and separable from, the four sections of the act upon which the rules, regulations and orders of the Corporation Commission challenged here were based. Section 2 neither directly, nor indirectly, has any place in this proceeding. Appellant's case would have been stronger if section 2 had contained no prohibitory clause, but would have left that legislative direction to section 1, and it would have been stronger also from the viewpoint of the appellant if it had defined as waste, the taking of oil from Oklahoma at less than its actual value. Neither of these things occurring, the independent and separable character of section 2 is at once manifest.

Summarizing then, we interpret the Oklahoma Conservation Act under the following propositions:

(1) Sections 1, 2, 3, ~~and~~ 4 and 5 embrace all of the waste provisions of the statute and evidence a common design and purpose on the part of the Oklahoma legislature to prevent waste.

(2) Where there is an excess of production over reasonable market demand in any oil pool in Oklahoma, and where that excess production results in waste as defined by the statute, the Corporation Commission of the state may reduce production to the reasonable market de-

mand to prevent the kinds of waste that are prohibited by the statute, and that arise from the overproduction.

(3) The record shows that this was what was done by the rules, regulations and orders of the Corporation Commission assailed here.

(4) The proration provision, namely: Section 4, may be enforced only when waste obtains. The record shows that this provision was carried out according to the intent of the act.

(5) The unreasonable discrimination between pools provision of section 4 means that the market outlet of each pool reasonably shall be protected in limiting the production of the pools of the state subjected to limitation, and here again the record shows that the statutory intent was carried out.

(6) Section 2 deals with price only; provides its own rules of conduct, sets up the machinery for its enforcement and is a provision separable from and independent of the waste sections of the statute.

Point 2.

When so interpreted this act does not offend the due process clause of the Fourteenth Amendment—the equality and liberty of contract phases of appellant's contention under this heading will not be discussed.

In *Julian* v. *Capshaw,* (145 Okl. 237) 292 Pac. 841, the Supreme Court of Oklahoma upheld the constitutionality of the Oklahoma Conservation Act challenged here, and the va-

lidity of an order of the Oklahoma Corporation Commission similar to the orders attacked here. It is true that the proceeding was an original one for a writ of prohibition to restrain the enforcement of the order, but notwithstanding this limitation the holding is an authority upon both the constitutionality of the act and the orders of the Corporation Commission. The order assaulted limited production and classified the several fields subject thereto, applying different percentages of reduction, and prorated the allowable production of each field subject to the order, among the operators thereof. In substance, all the contentions that were made here, were made in this case, yet the court upheld both the act and the order.

In the light of this holding, and at the very outset, we invoke the presumption of constitutionality always attaching to a legislative act and, in addition, the announcements of this court that the wisdom of the local legislature in passing, and that of the highest court in the state in sustaining the legislation, is entitled to the greatest weight in the decision of the question here presented, because of their familiarity with local conditions and needs.

—*Lindsley* v. *Natural Carbonic Gas Company*, 220 U. S. 61;

Fallbrook Irrigation District v. *Bradley*, 164 U. S. 112;

Middleton v. *Texas Power Company*, 149 U. S. 152;

Block v. *Hirsh*, 256 U. S. 135;

Gitlow v. *New York*, 268 U. S. 652;

Standard Oil Company v. *Marysville*, 279 U. S. 582;

Corporation Commission v. *Lowe*, 281 U. S. 431; *O'Gorman* v. *Hartford Insurance Company*, 282 U. S. 251.

Equally important in the decision of this case is the well-settled doctrine that when the constitutionality of a statute is open to doubt or debate, or if it is susceptible of two constructions, one favoring, the other opposing the constitutionality of the statute, it should be upheld. *Gorieb* v. *Fox*, 273 U. S. 687; *Zahn* v. *Public Works*, 274 U. S. 325; *Levy* v. *Segal*, 258 U. S. 242; *Plymouth Coal Company* v. *Pennsylvania*, 232 U. S. 531; *St. Louis Railway* v. *Arkansas*, 235 U. S. 350.

The essence of the question under this heading is to contrast the police power of the states with the Fourteenth Amendment. In outlining the scope of the police power as against the Fourteenth Amendment, the following fundamentals should not be overlooked.

It need be said in a general way that the police power extends to all the great public needs. *Camfield* v. *United States*, 167 U. S. 518; *Noble State Bank* v. *Haskell*, 219 U. S. 104. It is the most essential of powers, at times the most insistent and always one of the least limitable of the powers of government. *Eubank* v. *City of Richmond*, 226 U. S. 137.

Police power not only includes regulations to promote the health, peace, morals and good order of the people, but also the power to legislate *so as to increase the industries of the state, develop its resources and add to its wealth and prosperity*. *Barbier* v. *Connolly*, 113 U. S. 27.

It is also held that the concept (police power) is based upon the principle that every person ought to so use his property as not to injure his neighbors and that private interest must be made subservient to the general interests of the community. *Slaughterhouse Cases,* 16 Wall 36; *Euclid* v. *Ambler,* 272 U. S. 365.

Local conditions should be taken into account in determining the extent of the police power. *Bacon* v. *Walker,* 204 U. S. 311; *Terrace* v. *Thompson,* 263 U. S. 197.

The scope of the police power depends upon conditions as they change from time to time. A measure that would be invalid in a state of society or under economic conditions previously existing might be held constitutional by reason of a change of circumstances. *Euclid* v. *Ambler, supra; Zahn* v. *Board of Public Works, supra; Block* v. *Hirsh, supra.*

Where a strong and preponderant opinion prevails in the state that a particular statute is greatly and immediately necessary to the public welfare, that factor has an important influence in establishing the limitation of the police power in the particular case. *Muller* v. *Oregon,* 208 U. S. 412; *Noble State Bank* v. *Haskell, supra.*

Appellant devotes about four pages of his brief in declaring the rights that are created by oil and gas leases under the laws of Oklahoma. (Appellant's brief, pp. 33-37.) These considerations totally are beside the mark. The question that is before the court in this case is the degree in which appellant's rights are regulated by the Oklahoma Conservation Act and the orders of the Corporation Com-

mission made thereunder. Even then they gain slight comfort from the Oklahoma cases they cite. Not a one of them deals with the correlative rights between operators in the same pool. In *Rich* v. *Doneghey*, 71 Okl. 204, the leading Oklahoma case, defining the rights of an oil lessee, decided in 1918, three years after the adoption of the Conservation Act here involved, the court observed:

> "But with respect to such oil and gas, they had certain rights designated by the same courts as a qualified ownership thereof, but which may be more accurately stated as exclusive rights *subject to legislative control against waste* • • • ."

It matters not to what dignity or sanctity the oil and gas rights of the appellant might reach. Those rights, whatever their character, were still subject to a valid regulation of the police power of Oklahoma, and the degree of that regulation is the question here, and nothing else. In contrasting appellant's property rights and the exercise of the police power of the State of Oklahoma as evidenced by its Conservation Act and the orders of the Corporation Commission, we shall follow two methods. First, we will use the oil and gas police regulations to sustain our position, and then turn to other police regulations, of far-reaching character, regulating the use of property, that have been upheld by this court.

Both the appellant and the appellees in respect of their several contentions have cited *Ohio Oil Company* v. *Indiana*, 177 U. S. 190, perhaps the leading case applicable here, but it appears to us that the true attitude of this decision in its immediate application is not made clear. The Indiana

statute assailed in the *Ohio Oil Company* case, on its face, was a simple one. It simply prohibited the escape of oil or gas from any well two days after it was drilled in. But this case went to the Supreme Court of the United States on the ruling of the court below on a demurrer to the answer of the defendant. In that answer the defendant alleged that it was engaged exclusively in the business of producing oil, and not gas, and that it had a large investment in its oil business; that it used the gas to recover its oil, and could not recover it otherwise; that no means had been devised to effect this result save through the use of gas. In this predicament the case went to the Supreme Court of the United States. Here, in effect, there was a complete deprivation of property, not a partial deprivation of the character depended upon by the appellant in this case. Basing its decision upon the doctrine of correlative rights obtaining in an oil pool, the court held that the statute did not violate the Fourteenth Amendment. *Lindsley* v. *Natural Carbonic Gas Company,* 220 U. S. 61, also cited by both parties, goes off on the doctrine of regulation of correlative rights. Here again we have an absolute authority that correlative rights may be adjusted and regulated by the police power of the state.

While *Walls* v. *Midland Carbon Company,* 254 U. S. 300, involves the regulation of correlative rights under the police power it assumes the broader phase of a state's interest in its natural resources and for that reason requires more extended comment. Here the Carbon Company, which challenged the constitutionality of the Wyoming Act in question, had made an investment of $375,000.00 in a plant

for the manufacture of carbon block from natural gas in Wyoming before the passage of the act. The prohibition of the act was not absolute. It applied only when the gas supply was within ten miles of an incorporated town or industrial plant, and even then it did not apply if the residue gas, that is, the gas remaining after it was used for the manufacture of carbon black, was utilized for manufacturing or domestic purposes. With these exceptions the use of gas was declared to be a wasteful and extravagant use and such use prohibited. The gas supply of the Carbon Company came within the condemnation of the act; that is, it was within ten miles of the City of Lovell. Furthermore, it was not using the residue gas for industrial and domestic purposes. The correlative phase of the case arose from the fact that the Lovell Gas and Electric Company, an industry furnishing gas and electricity to the town of Lovell, obtained its supply of gas for these purposes from the same reservoir that the Carbon Company was obtaining its gas. The proof showed that the town of Lovell would have an adequate supply of gas for thirty years from the reservoir, if the wasteful uses resorted to by the Carbon Company in the manufacture of carbon black were not perpetrated. On the other hand, if its use were permitted to continue there was available to the town a supply for three years only. The court under the doctrine of correlative rights, and under the authority of the *Ohio Oil* and *Lindsley* cases, sustained the act. It is clear from this holding that an element of the decision was the state's interest in the preservation of its natural resources which carried the

case beyond the *Ohio Oil* and *Lindsley* cases. This language of Judge McKenna is enlightening:

> "And there is great disproportion between the gas and the product (carbon black), and necessarily there was presented to the judgment and policy of the state a comparison of utilities which involved as well the preservation of the natural resources of the state, and the equal participation in them by the people of the state. And the duration of this utility was for the consideration of the state, and we do not think that the state was required by the Constitution of the United States to stand idly by while these resources were disproportionately used, *or used in such way that tended to their depletion*, having no power of interference." (Italics ours.)

Not only do we here have a clear announcement of the state's power to preserve its natural resources for the use of its people, but we have the doctrine that in considering the constitutionality of a state police statute, the Supreme Court of the United States may weigh the relative economic advantages that will result to the state with the statute or without it. Such, clearly, was the attitude of this court in *Miller* v. *Schoene*, 276 U. S. 272, where, in effect, the value of cedar trees and the value of apple orchards of Virginia were compared in upholding a police statute of the state designed to protect the apple industry of Virginia.

In searching the exact question now considered, *Oxford Oil Company* v. *Atlantic Producing Company*, 22 Fed. (2d) 597 (Fifth Circuit), and *Marrs* v. *City of Oxford*, 32 Fed. (2d) 134 (Eighth Circuit), must not be overlooked. In the *Atlantic* case, the decision rested on a comparatively

narrow ground. An Act of the Texas Legislature conferred upon the Railroad Commission of that state the power to adopt rules and regulations to conserve the oil and gas resources of the state. Under this general authority, the Railroad Commission of Texas promulgated Rule 37 which provided among other things that no wells shall be drilled nearer than 150 feet to any property line provided that the Commission, in order to prevent waste, or to protect vested rights, should grant exceptions permitting drilling within shorter distances. Here, the Oxford Company owned a lease on a long strip of 3190 feet, 56 feet wide at one end and 86 feet wide at the other. It was in the situation of the appellant here. It owns small tracts interspersed with larger ones. Owing to the limited extent of its holding, to obey the order of the Texas Railroad Commission literally, was to deprive it of the right to drill entirely, other companies holding rather extensive acreage adjoining the strip. The Oxford Company claimed the right to drill ten wells on its strip. Under the reserve power of the Railroad Commission, it permitted the Oxford Company locations for four wells. Suit was brought by the Oxford Company to enjoin the drilling limitation imposed upon it by the supplemental order of the Railroad Commission on the ground that its property was taken without due process of law. On the doctrine of correlative rights, and under the authority of *Ohio Oil Company* v. *Indiana* and *Lindsley* v. *Natural Carbonic Gas Company*, it was held that it was within the power of the legislature to lay down a general rule for the protection of the mineral rights of the owners of adjoining land and to leave the details of enforcing that rule to

an administrative agency. The pertinent thing being that it was claimed that the Fourteenth Amendment was violated by this holding, it is important to observe that a writ of *certiorari* was denied by this court. 277 U. S. 285. Of equal, if not, greater importance in contrasting police power and due process is the *City of Oxford* case. This case involved a town-lot drilling proposition identical to the situation of the appellant. The town of Oxford, Kansas, by ordinance, had provided, in effect, that no more than one well should be drilled to a town block; that the owners of the leases covering the other lots in the block should be permitted to participate in the production from this well by contributing to the cost of drilling and operation on a footage basis. Marrs, claiming the right to drill on his own lot regardless of this ordinance, brought suit to enjoin the enforcement thereof under the Fourteenth Amendment. *This was an extreme case of the adjustment of correlative rights.* The court held that the statute was intended to protect rather than to destroy correlative rights and that under the *Ohio* case the ordinance was sustainable. Here again, notwithstanding the alleged serious character of the right infringed under the Fourteenth Amendment, a writ of *certiorari* was denied by this court. 280 U. S. 563.

This brings us to the recent *Bandini* cases from California which, in the main, deal with correlative rights and the exercise of the police power of the state to adjust and regulate them. In the *Bandini* case, the Act of California forbade the unreasonable waste of natural gas. (California Statutes 1929, p. 923.) Under the statute a decree was entered by the Superior Court for Los Angeles County estab-

lishing a gas oil ratio for the production of oil from the Santa Fe Springs field applicable to the Bandini Petroleum Company, and under this ratio the daily production of the Bandini Company substantially was cut in half, namely, an unrestricted flow of 19,554 barrels was limited to 10,211 barrels. The statute, and its application, was attacked as unconstitutional by the Bandini Company as a taking of property under the Fourteenth Amendment. While the public interest aspect was referred to by the Court of Appeals, the decision in its essence was based upon the coexisting correlative rights of adjoining owners and the police statute upheld on that basis. We are not unmindful of the fact that this case came to the Court of Appeals on the narrow ground of applying to that court for a writ of prohibition to enforce the injunction of the trial court. *Bandini Petroleum Company* v. *Superior Court*, 293 Pac. 899. On a broader ground, however, the same decree went to the Supreme Court of California in *People* v. *Associated Oil Company*, 294 Pac. 717. Here, while the matter of correlative rights was referred to, the conclusion is inescapable that the real basis of the decision of the Supreme Court of California was that of the public interest in the natural resources of the state, the court saying:

> "We are entirely satisfied that the waste of these natural resources may be regulated and the unreasonable waste thereof may be prohibited in the exercise of the police power of the state."

When the *Bandini* case came to this court from the writ of prohibition refused by the California Court of Appeals, this court very properly, within the limitations of the case

before it, upheld the California statute as one not impinging the Fourteenth Amendment on its face, stressed the matter of protecting correlative rights, and yet observed that the Supreme Court of California in another angle, in the same litigation, had emphasized the public interest phase of this question. *Bandini Petroleum Company* v. *Superior Court*, 76 L. ed. 123.

Departing from the oil cases and addressing ourselves to the fundamentals, again we refer to certain settled principles. No definite rule can be laid down to determine the police power of the states. *Hudson County Water Company* v. *McCarter*, 209 U. S. 349. In the *Euclid* case, it is said:

> "The line which this field (police power) separates the legitimate from the illegitimate assumption of power is not capable of process delimitation. It varies with circumstances and conditions." *Euclid* v. *Ambler Realty Company*, 71 L. ed. 171.

The burden is on the party attacking the constitutionality of the particular statute to establish the invalidating facts. *Minnesota Rate Cases*, 230 U. S. 352; *Weaver* v. *Palmer*, 270 U. S. 402. If a regulatory statute is clearly arbitrary and unreasonable in its infringement of property rights, it falls within the condemnation of the due process clause. *Gorieb* v. *Fox, supra; Zahn* v. *Board of Public Works, supra; Eubank* v. *City of Richmond, supra.* Late decisions evidence a pronounced tendency on the part of the court toward a closer scrutiny of the factual situation when called upon to determine the constitutionality of a police statute. *Muller* v. *Oregon, supra; Chastleton Corporation* v. *Sinclair*,

264 U. S. 543. Within these general principles we will advert to those cases where police statutes of the states have been upheld.

The Zoning Cases in principle are in themselves significant. *Hadacheck* v. *Sebastian*, 259 U. S. 394, the brick plant inhibited was alleged to have a value of $800,000.00 should the zoning ordinance not be effective. Under the ordinance it would have a value of but $60,000.00. In *Miller* v. *Schoene*, 276 U. S. 272, there was a balancing of the economic situation of Virginia. Cedar trees, on the one side, not so important to the economics of the state. Apple orchards, on the other, one of the most important industries of the state. A statute designed to protect the latter and annihilate the former was upheld. In short, the classic language of Mr. Justice HOLMES, in *Pennsylvania Coal Company* v. *Mahon*, a case cited by the appellant, the degree of taking is the test between the police power on one side and the Fourteenth Amendment on the other. If the regulation goes too far in the taking of property, it offends the Fourteenth Amendment. If not, the statute is valid. *Pennsylvania Coal Company* v. *Mahon*, 260 U. S. 393.

Applying these principles to this case, we have the following situation: Appellant owns isolated oil tracts in the Oklahoma City field less than 35 acres in extent. Against this the field has 10,000 acres of producing territory. The appellant owns ten producing wells; 88 per cent of the wells, as shown by the record, and 90 per cent of the production from the field, are obeying the orders of the Corporation Commission. Appellant claims that by reason of

its peculiar advantage, namely, its pipe line outlet, and its ability to handle all of its production, it should be permitted to do so. It makes this contention against 88 per cent of the wells of the field and against 90 per cent of the production. It ignores completely its correlative obligations to its neighbors of which it has already taken tremendous advantage, and it ignores the drainage characteristics of the field, and more important still, it ignores the gas energy factor which produces the oil. Against this unbridled and purely mechanical and capitalistic advantage of the appellant stands the unfortunate situation of its neighbors. Every barrel of oil and every thousand feet of gas energy which the appellant shall use above that allowed its neighbors redounds to its peculiar advantage. The design of the Oklahoma Conservation Act and the design of the orders of the Oklahoma Corporation Commission were to prevent this. The appellant never was deprived of taking its fair share of any oil from its property. It was never deprived of taking its fair share of the gas energy to produce that oil. All that the act and the orders of the Corporation Commission complained of did, was to hold it to an equality of taking between it and the other operators in the field. In these circumstances, it was a valid and reasonable exercise of the police power.

Another circumstance of important bearing enters into the decision of this case. The Oklahoma Conservation Act applies only during periods of overproduction. Furthermore, the orders complained of are for three months' periods subject to re-adjustment. Both the act and the orders are emergency requirements. This would sustain their va-

lidity even if they were otherwise invalid. *Block* v. *Hirsh*, 256 U. S. 135; *Brown Holding Company* v. *Feldman*, 256 U. S. 170. Deprivation of the liberty to contract is but a phase of the property clause of the Fourteenth Amendment, and the equality clause of that amendment is so completely beyond the scope of this case that we shall not take time to argue either of these questions.

Point 3.

Section 2 of the Oklahoma Conservation Act, the price fixing provision, clearly is separable from the waste provisions of the act, namely, sections 1, 3, 4 and 5, which alone are material to this controversy.

This subject has been treated as fully as it can be treated by us under Point 1. We think that we there demonstrated that section 2 is an independent and distinct provision of the act, and since section 10 provides that the invalidity of any section of the act shall not affect the validity of the remaining portion thereof, we are content to submit this feature of the case on the proposition that if the court shall uphold the waste sections as constitutional, no merit shall be found in the contention of counsel for appellant that the waste sections and section 2 are dependent and non-separable.

Point 4.

There is no such uncertainty in respect of the meaning of the terms "waste," "underground waste" and "waste incident to the production of crude oil and petroleum in excess of transportation or market facilities or reasonable market demands," as these terms appear in section 3 of the act as to render the act void on that ground.

We must admit a certain difficulty in understanding the charges of uncertainty by counsel for appellant. They are unrelated, confusing, and in the strict merits of this case lead nowhere. If we are right in our interpretation of the meaning of the terms "ordinary waste" and "underground waste" under Point 1, those two terms at least are not open to the charge of statutory uncertainty. If the term "economic waste" has the qualified meaning we there attributed to it, that phrase equally is proof against the charge of uncertainty. What counsel for appellant apparently do not apprehend is that the market demand clause is a dependent one, and that it is operative only when one or more of the other elements of waste defined by the statute appear. Such, precisely, was the nature of the orders entered by the Corporation Commission. The Commission found that there was physical waste, underground waste, and economic waste, and the lower court held that these findings were sustained by the evidence. In addition, the evidence before the court below sustained findings to the same effect. This leaves open a single question, the phrase, "unreasonable market demand." In our view of the case, this means nothing more or less than market demand.

The term "reasonable," gives to this provision the elasticity which modern, commercial intercourse necessarily demands. No one can determine the exact extent of the market demand of any commodity in the United States largely dealt in at a given point of time. The word "reasonable," was the natural one to be attached to this concept in all the circumstances of the case. The record further shows that the Oklahoma Corporation Commission made every proper effort to ascertain the reasonable market demand every time it made an order. The orders were of three months' duration only, and to adjust any possible inequalities liberty was given to increase, or decrease, the allowable output to the demand within the three months' period.

The courts, long ago, departed from the strict principles of exact statutory certainty, especially so where the general rule of conduct was laid down by the statute to be carried out by an administrative body. The complexities of modern, industrial and commercial life necessarily require this relaxation of former precedents. The authorities upon this question are without number. *Mahler* v. *Eby,* 264 U. S. 32; *Field* v. *Clark,* 143 U. S. 649; *Buttfield* v. *Stranahan,* 192 U. S. 470; *Mutual Film Corporation* v. *Industrial Commission,* 236 U. S. 247. Unfair methods of competition: *Federal Trade Commission* v. *Beechnut,* 257 U. S. 441. The *Cedar Rust* case of Virginia held not uncertain. *Miller* v. *Schoene,* 276 U. S. 272. Regulation of hours of employment, *except in case of emergency, upheld. B. & O. R. R. Co.* v. *Interstate Commerce Commission,* 221 U. S. 612. There is no uncertainty under a statute giving to the Secretary of War the power to determine that a bridge is an unrea-

sonable obstruction to navigation. *Union Bridge Co.* v. *United States,* 204 U. S. 364; *Monongahela Bridge Co.* v. *United States,* 216 U. S. 177; *Hannibal Bridge Co.* v. *United States,* 221 U. S. 194. To emphasize the thought considered here, this court, because of the very complexity of the subject dealt with, read the word "unreasonable" in an absolute statutory mandate against an unlawful restraint of trade. *The Standard Oil Case,* 221 U. S. 1; the *American Tobacco Case,* 221 U. S. 119.

Keeping in mind that reasonable market demand is a dependent, rather than an independent provision of section 3, that it operates only when exact criteria of waste are determined by the Corporation Commission, we have the compelling precedence before us of the two California cases where the statute, in express terms, condemned the unreasonable waste of gas and yet where, to ascertain that there had been an unreasonable waste of gas, complex factors had to be taken into account. The charge of uncertainty was made before the California Court of Appeals and before the Supreme Court as well, and there rejected. *Bandini Petroleum Co.* v. *Superior Court,* 293 Pac. 905; *People* v. *Associated Oil Co.,* 294 Pac. 724. In the latter case, the court said:

> "The best mean ratio, or the amount of gas which bears a reasonable proportion to the amount of oil produced, may vary for each reservoir or deposit of oil, depending upon the natural characteristics above mentioned, and may, and probably does, vary for each well drilled into the same reservoir, depending upon the location of the well and other factors. Therefore, because of the many and varying conditions peculiar to

each reservoir and to each well, which will bear upon a determination of what is a reasonable proportion of gas to the amount of oil produced, it may be said that it would be impossible for the legislature to frame a measure based on ratios or percentages or definite proportions that would operate without discrimination, and that what is a fair proportion of gas to the amount of oil produced from each well or reservoir is a matter which may be ascertained to a fair degree of certainty in each individual case."

This court adopted the reasoning of the Supreme Court of California. *Bandini Petroleum Co.* v. *Superior Court*, 76 L. ed. 128. As it was impossible, under the California statute, to lay down a different rule regarding the waste of gas, than the one prohibiting the unreasonable waste of such gas, then, in a similar state of affairs, it was equally impossible for the Oklahoma legislature to do more than to prevent waste by limiting production to the reasonable market demand, when production in excess of that figure resulted in one or more of the kinds of waste condemned by the statute.

Point 5.

There was no delegation of legislative power by this act. The legislative prohibitions are clear and certain and the power conferred upon the Oklahoma Corporation Commission by the act was that of applying the standards of waste as established by the legislature to the peculiar facts of a case. In short, an administrative duty, nothing more, was imposed upon the Corporation Commission by the Oklahoma Conservation Act.

If our arguments under the earlier points of this brief

shall be sustained, there is no basis for reversal under this heading. The Oklahoma Conservation Act, within adequate bounds, lays down requisite rules of conduct. To administer these rules within the clear necessities of the case, administrative duties are imposed upon the Oklahoma Corporation Commission to carry them into effect. The duties so imposed are quite in keeping with similar responsibilities cast upon federal and state agencies, upheld by decisions too numerous to mention. In light of the recent decisions as distinguished from the more rigid requirements of the earlier cases, there is no possible basis for the upholding of the proposition that is here negatived. The Oklahoma statute states the rule of conduct. The Oklahoma Corporation Commission, after notice and hearing, applies it to the facts of the particular case, and, with these two circumstances admitted, the affirmative of the question we are now urging clearly comes within the modern principles of administrative law.

POINT 6.

The rules, regulations and orders of the Oklahoma Corporation Commission assailed by appellant here as unconstitutional and void clearly are within the provisions of the Oklahoma Conservation Act; hence it follows that all such proceedings of the Commission are immune from attack.

Under the act, the Oklahoma Corporation Commission entered the orders assailed by the appellant after due notice and full hearing, thus answering two of the important elements of due process. It found that at least three types of waste clearly and specifically condemned by the act were

occurring, namely, surface waste, underground waste, and economic waste. Repeatedly, the waste of gas energy in the Oklahoma City field and its effect upon ultimate recovery was adverted to by the Commission. Aside from every other consideration, the finding that any one of the wastes just referred to was occurring would have supported the orders. Then, the Commission supplied the ultimate requirement and purpose of the Oklahoma Conservation Act by finding that these wastes and each of them were caused by the production of oil in excess of the reasonable market demand. The underlying purpose of the Oklahoma statute was to prevent waste and, so far as this case is concerned, waste was to be prevented by adjusting production to the market. Not only this, but the other elements of the statute strictly were followed. The ultimate fact of excess production being ascertained, the allowable production was allocated to the pools of the state, each obtaining its actual market outlet so that there should be no discrimination between pools, one of the things condemned by the statute. Then, in addition, and within each of the pools, each operator was to obtain his share of the market allowed for his pool. The orders, in their very essence, represented nothing more or less than a sane, equitable and fair working out of the economics of the situation, and this, precisely, was what the Oklahoma Conservation Act was designed to accomplish. The trial court not only upheld all the findings upon which the orders of the Corporation Commission were based, and the orders entered in pursuance thereof, but heard all the new evidence appellant had to offer, and upon that foundation found against the appellant. If, then, we

have correctly interpreted the Oklahoma Conservation Law and, if that law when so interpreted stands above the Fourteenth Amendment, we emphasize the consideration that the orders assailed here clearly are within the provisions of the act, and therefore they, too, withstand any assault made in virtue of the Fourteenth Amendment.

Point 7.

The duties committed to, or discharged by the proration umpire and operators' committees, under the direction of the Oklahoma Corporation Commission, do not have the effect of invalidating the rules, regulations and orders of the Commission complained of by appellant in this case.

The negative of the above proposition is strongly urged by counsel for appellant, so strongly in fact that it made some impression on the majority opinion of the court below. As we view the case, neither counsel for appellant nor the court below sensed this proposition in its true proportion. That proportion is that regardless of what was done by the umpire and regardless of what was done by the operators' committee, the *judgment* of the Corporation Commission was the ultimate thing. That, and that alone, controlled. Under the statute, the Corporation Commission had the power to appoint the umpire, with the approval of the governor, which was done. Independently of the statute it probably had the informal right to consult the advice of operators' committees skilled in this business. These, in a statutory sense, were helpful aids. An impartial search of the record will show that in all essential particulars the judgment of the Corporation Commission controlled and

this is the important thing. While the majority in its opinion below criticized the actions of the umpire and the operators' committee, it clearly sensed this principle. In sustaining our position in this regard, the irrigation and drainage cases are helpful. Interested parties were always involved in these proceedings. Frequently, they had a part in the actual direction of the project, and yet in no instance was this indirect participation permitted to over-ride the constitutionality of the act for the obvious reason that there was a statutory body that ultimately gave its official sanction to what was done. *Fallbrook Irrigation District* v. *Bradley*, 164 U. S. 112; *Hager* v. *Reclamation District*, 111 U. S. 701; *O'Neill* v. *Leamer*, 239 U. S. 244. To illustrate the exact contention that we are making here, some of the other holdings of this court should be referred to. Where the adoption of a set-back ordinance depended upon the will of a certain percentage of the interested parties, it was held to violate the Fourteenth Amendment. *Eubank* v. *City of Richmond*, 226 U. S. 137. But, where the question was determined by official sanction, although initiated by the property owners, the rule was different. *Gorieb* v. *Fox*, 274 U. S. 603. Even more compelling is *Miller* v. *Schoene*, 276 U. S. 217, where the proceeding could be instituted by parties holding an adverse property interest, but where the official sanction of a single public official was the determining factor.

Touching this question generally, we refer to *Cusack Co.* v. *Chicago*, 242 U. S. 526; *Lent* v. *Tillson*, 140 U. S. 316; *Hibben* v. *Smith*, 191 U. S. 310. In *Plymouth Coal Company* v. *Pennsylvania*, 232 U. S. 531, an act of the Pennsylvania

legislature required the owners of adjoining coal properties to leave a pillar of coal along the property lines of sufficient thickness to cover the safety of employees. The width of the pillar was to be determined by the engineers of the adjoining properties together with the district mine inspector. It was here contended that the act was unconstitutional under the Fourteenth Amendment. No one can read this case without perceiving that while the engineers of the adjoining properties were to act with the mine inspector, it was the *judgment* of the mine inspector that controlled. This, precisely, is the case here presented. Under the record, the judgment of the Oklahoma Corporation Commismission, first in entering, and then in carrying out the orders complained of, always controlled. This puts the case above the Fourteenth Amendment.

Point 8.

Neither the Oklahoma Conservation Act, nor the rules, regulations or orders of the Oklahoma Corporation Commission made thereunder, the subjects of assault here, offend the commerce clause of the Federal Constitution.

We cannot believe that counsel for appellant are advancing the affirmative of this proposition aggressively. To do so, is to strike down every conception which the American lawyer has of the division of power between the nation and the states. The production of oil is a matter of local and not of national concern. *Heisler* v. *Thomas Colliery Co.*, 260 U. S. 245; *Oliver Iron Co.* v. *Lord*, 262 U. S. 172; *Capital City Dairy Co.* v. *Ohio*, 183 U. S. 238; *Crescent Cotton*

Oil Co. v. *Mississippi,* 257 U. S. 129. In *Ohio Oil Co.* v. *Indiana,* involving an oil conservation statute, this court held that the matter was one of local and not national regulation. In the child labor cases, division of power between the national government and the state governments under the commerce clause was most vigorously advocated. Perhaps no aspect of this problem came to the court with more overwhelming public opinion behind it, one way or the other. The court held the regulation of child labor in a manufacturer's enterprise of a state was one of state and not national concern. *Hammer* v. *Dagenhart,* 247 U. S. 251. Even where the same object was attempted to be accomplished by the tax power, the ruling was the same. *Child Labor Tax Case,* 259 U. S. 20. As a fundamental proposition two principles obtain. Interstate commerce does not attach until the movement in the current of interstate commerce begins. *Secondly,* that the product is intended for interstate commerce, has nothing to do with it. In these circumstances, the regulation of production in Oklahoma to promote a local purpose, that is to prevent waste, is essentially local. If we cannot uphold this principle, the division of national and state power as ordained by the constitution becomes a nullity. On this branch of the case, if we can sustain the other contentions that we have urged here, we have no doubt about the result.

Conclusion.

This brief is written from the viewpoint of the Oil States Advisory Committee. We have read the brief of counsel for appellant, but we have never seen the brief of counsel for the appellees. We have referred to the creation of the Federal Oil Conservation Board by the president and the creation of this committee which, in effect, grew out of that action. Our interest in the questions presented here are far more fundamental than the interest of either of the parties. With every possible allowance, we cannot escape the conviction that the appellant takes a purely individualistic and selfish point of view. It has a market outlet for all its oil. It has the capital to provide that outlet. It ignores completely that the business of producing oil is distinguishable from other private, individualistic enterprise. In an oil pool, it is but one of a number of other operators who must make use of the same general force, the gas energy, and that necessarily establishes not only correlative obligations on its part, but correlative rights against it and in favor of the other operators in the pool. The Oklahoma law is a far-reaching attempt on the part of an American state to reach this difficult and complex question. In the main, the model established by the statute has been followed in three other important oil producing states. It is because of these things that the Oil States Ad-

visory Committee, in the public interest, deemed it a duty to file this brief.

Respectfully submitted,

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APPENDIX A.

"December 19, 1924.

"To the Secretary of War,
Secretary of the Navy,
Secretary of the Interior,
Secretary of Commerce.

"SIRS: It is evident that the present methods of capturing our oil deposits is wasteful to an alarming degree in that it becomes impossible to conserve oil in the ground under our present leasing and royalty practices if a neighboring owner or lessee desires to gain possession of his deposits.

"Developing aircrafts indicate that our national defense must be supplemented, if not dominated, by aviation. It is even probable that the supremacy of nations may be determined by the possession of available petroleum and its products.

"I am advised that our current oil supply is kept up only by drilling many thousands of new wells each year, and that the failure to bring in producing wells for a two-year period would slow down the wheels of industry and bring serious industrial depression. The problem of a future shortage in fuel and lubricating oil, not to mention gasoline, must be avoided or our manufacturing productivity will be curtailed to an extent not easily calculated.

"We are not today, however, facing an undersupply of oil. The production of our 300,000 wells is in excess of our immediate requirements. That overproduction in itself encourages cheapness, which in turn leads to wastefulness and disregard of essential values. Oil, of which our resources are limited, is largely taking the place of coal, the supply of which seems to be unlimited, but coal cannot take the place of oil in most of its higher uses, on land or sea or in the air.

"For the purpose of giving this responsibility of government in all its aspects the consideration it demands, I have constituted a Federal Oil Conservation Broad consisting of the Secretaries of War, Navy, Interior, and Commerce, to study the government's responsibilities and to enlist the full cooperation of representatives of the oil industry in the investigation. The government itself is at present one of the largest lessors of oil lands, and the public domain still includes large undeveloped reserves of oil, so that the administration of oil resources is a practical question with the Department of the Interior.

"I would express the desire that these conferences may be open and exhaustive. The oil industry itself might be permitted to determine its own future. That future might be left to the simple working of the law of supply and demand but for the patent fact that the oil industry's welfare is so intimately linked with the industrial prosperity and safety of the whole people, that government and business can well join forces to work out this problem of practical conservation.

"Last March I appointed a commission to advise me on the special subject of the best policy to insure the future supply of fuel oil for the Navy. That commission will continue to function in its limited field and might to advantage sit with the Conservation Board in the conferences I expect will be between these four Secretaries directly concerned and the outstanding producers of petroleum. Similarly, the members of the Conservation Board will call upon their technical advisers in the bureaus to contribute to the full discussion of ways and means of safeguarding the national security through conservation of our oil.

"Very truly yours,

"CALVIN COOLIDGE."

SUPREME COURT OF THE UNITED STATES.

Nos. 122, 485 and 486.—October Term, 1931.

Champlin Refining Company, Appellant,
122 *vs.*
Corporation Commission of the State of Oklahoma et al., etc.

Champlin Refining Company, Appellant,
485 *vs.*
Corporation Commission of the State of Oklahoma and Paul Walker, E. R. Hughes, and C. C. Childers, etc., et al.

Corporation Commission of the State of Oklahoma and Paul Walker, E. R. Hughes, and C. C. Childers, etc., et al., Appellants,
486 *vs.*
Champlin Refining Company.

Appeals from the District Court of the United States for the Western District of Oklahoma.

[May 16, 1932.]

Mr. Justice Butler delivered the opinion of the Court.

The refining company by this suit seeks to enjoin the commission, attorney general and other state officers from enforcing certain provisions of c. 25 of the laws of Oklahoma enacted February 11, 1915,* and certain orders of the commission on the ground that

*C. O. S. 1921, §§ 7954-7963.

§ 1. That the production of crude oil or petroleum in the State of Oklahoma, in such a manner and under such conditions as to constitute waste, is hereby prohibited. [§ 7954.]

§ 2. That the taking of crude oil or petroleum from any oil-bearing sand or sands in the State of Oklahoma at a time when there is not a market demand therefor at the well at a price equivalent to the actual value of such crude oil or petroleum is hereby prohibited, and the actual value of such crude oil or petroleum at any time shall be the average value as near as may be ascertained in the United States at retail of the by-products of such

they are repugnant to the due process and equal protection clauses of the Fourteenth Amendment and the commerce clause. The district court consisting of three judges, 28 U. S. C., § 380, denied plaintiff's application for a temporary injunction, and No. 122 is

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crude oil or petroleum when refined less the cost and a reasonable profit in the business of transporting, refining and marketing the same, and the Corporation Commission of this State is hereby invested [sic] with the authority and power to investigate and determine from time to time the actual value of such crude oil or petroleum by the standard herein provided, and when so determined said Commission shall promulgate its findings by its orders duly made and recorded, and publish the same in some newspaper of general circulation in the State. [§ 7955.]

§ 3. That the term "waste" as used herein, in addition to its ordinary meaning, shall include economic waste, underground waste, surface waste, and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands. The Corporation Commission shall have authority to make rules and regulations for the prevention of such wastes, and for the protection of all fresh water strata, and oil and gas bearing strata, encountered in any well drilled for oil. [§ 7956.]

§ 4. That whenever the full production from any common source of supply of crude oil or petroleum in this State can only be obtained under conditions constituting waste as herein defined, then any person, firm or corporation, having the right to drill into and produce oil from any such common source of supply, may take therefrom only such proportion of all crude oil and petroleum that may be produced therefrom, without waste, as the production of the well or wells of any such person, firm or corporation, bears to the total production of such common source of supply. The Corporation Commission is authorized to so regulate the taking of crude oil or petroleum from any or all such common sources of supply, within the State of Oklahoma, as to prevent the inequitable or unfair taking, from a common source of supply, of such crude oil or petroleum, by any person, firm, or corporation, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another. [§ 7957.]

§ 5. That for the purpose of determining such production, a gauge of each well shall be taken under rules and regulations to be prescribed by the Corporation Commission, and said Commission is authorized and directed to make and promulgate, by proper order, such other rules and regulations, and to employ or appoint such agents with the consent of the Governor, as may be necessary to enforce this act. [§ 7958.]

§ 6. That any person, firm, or corporation, or the Attorney General on behalf of the State, may institute proceedings before the Corporation Commission, or apply for a hearing before said Commission, upon any question relating to the enforcement of this act, and jurisdiction is hereby conferred upon said Commission to hear and determine the same. Said Commission

plaintiff's appeal from such refusal. As final judgment has been entered, this appeal will be dismissed. The final decree sustains certain regulatory provisions of the Act but declares invalid some of its penal clauses. 51 F. (2d) 823. No. 485 is plaintiff's appeal from the first mentioned portion of the decree and No. 486 is defendants' appeal from the other part.

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shall set a time and place, when and where such hearing shall be had and give reasonable notice thereof to all persons or classes interested therein, by publication in some newspaper or newspapers, having general circulation in the State, and in addition thereto, shall cause reasonable notice in writing to be served personally on any person, firm or corporation complained against. In the exercise and enforcement of such jurisdiction, said Commission is authorized to determine any question or fact, arising hereunder, and to summon witnesses, make ancillary orders, and use mesne and final process, including inspection and punishment as for contempt, analogous to proceedings under its control over public service corporations, as now provided by law. [§ 7959.]

§ 7. That appellate jurisdiction is hereby conferred upon the Supreme Court in this State to review the action of said Commission in making any order, or orders, under this act. Such appeal may be taken by any person, firm or corporation, shown by the record to be interested therein, in the same manner and time as appeals are allowed by law from other orders of the Corporation Commission. Said orders so appealed from shall not be superseded by the mere fact of such appeal being taken, but shall be and remain in full force and effect until legally suspended or set aside by the Supreme Court. [§ 7960.]

§ 8. That in addition to any penalty that may be imposed by the Corporation Commission for contempt, any person, firm, or corporation, or any officer, agent or employee thereof, directly or indirectly violating the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof, in a court of competent jurisdiction, shall be punished by a fine in any sum not to exceed five thousand dollars ($5,000.00), or by imprisonment in the county jail not to exceed thirty (30) days, or by both fine and imprisonment. [§ 7961.]

§ 9. That in addition to any penalty imposed under the preceding section, any person, firm or corporation, violating the provisions of this act, shall be subject to have his or its producing property placed in the hands of a receiver by a court of competent jurisdiction, at the suit of the State through the Attorney General, or any county attorney, but such receivership shall only extend to the operating of producing wells and the marketing of the production thereof, under the provisions of this act. [§ 7962.]

§ 10. That the invalidity of any section, sub-division, clause or sentence of this act shall not in any manner effect [sic] the validity of the remaining portion thereof. [§ 7963.]

The Act prohibits the production of petroleum in such a manner or under such conditions as constitute waste. §1. Section 3 defines waste to include—in addition to its ordinary meaning—economic underground and surface waste, and waste incident to production in excess of transportation or marketing facilities or reasonable market demands and empowers the commission to make rules and regulations for the prevention of such wastes. Whenever full production from any common source can only be obtained under conditions constituting waste, one having the right to produce oil from such source may take only his proportion of all that may be produced therefrom without waste as the production of his wells bears to the total. The commission is authorized to regulate the taking of oil from common sources so as to prevent unreasonable discrimination in favor of one source as against others. § 4. Gauges are to be taken for the purpose of determining production of wells. And the Commission is directed to promulgate rules and regulations and to appoint such agents as may be necessary to enforce the Act. § 5. Since the passage of the Act the commission has from time to time made "proration orders".

The court made its findings which, so far as need be given here, are indicated below:

Plaintiff is engaged in Oklahoma in the business of producing and refining crude oil and transporting and marketing it and its products in intrastate and interstate commerce. It has oil and gas leases in both the Greater Seminole and the Oklahoma City fields. In each field it has nine wells. It owns a refinery having a daily capacity of 15,000 barrels of crude and there produces gasoline and other products. It has approximately 735 tank cars, operates about 470 miles of pipeline including adequate facilities for the transportation of crude oil from the fields to its refinery, and has about 256 wholesale and 263 retail gasoline stations in Oklahoma and other States which are supplied from its refinery. At the refinery it has gas-tight steel storage tanks with a total capacity of about 645,000 barrels. It does not use earthen storage or permit its crude to run at large or waste any oil produced at its wells. All that it can produce will be utilized for commercial purposes. It also purchases much oil.

The Greater Seminole area covers a territory fifteen to twenty by eight to ten miles and has eight or more distinct pools in

formations which do not overlie each other. The first pool was discovered in 1925 and by June 15, 1931, there were 2141 producing wells having potential production of 564,908 barrels per day. The wells are separately owned and operated by 80 lessees. About three-fourths of them, owning wells with 40 per cent. of the total potential capacity of the field, have no pipelines or refineries and are entirely dependent for an outlet for their crude upon others who purchase and transport oil. Five companies, owning wells with about 13 per cent. of the potential production, have pipelines or refinery connections affording a partial outlet for their production. Nineteen other companies own or control pipelines extending into this area having a daily capacity of 468,200 barrels, and most of them from time to time purchase oil from other producers in the field.

The Oklahoma City field, about 65 miles west of the Seminole, is about six by three miles and part of it has been divided into small lots. All of plaintiff's leases are in that portion of the field. Oil was discovered there in December, 1928, and is being produced from four different formations more than 6,000 feet below the surface. In some parts of the area two or more overlie each other, and at many points the wells penetrate all overlying formations and are capable of producing from all of them. The field is not yet fully developed. June 15, 1931, there were 746 producing wells having an estimated potential of 2,987,993 barrels per day. These wells are owned by 53 different lessees. Thirty-six of them are wholly and eight are partially nonintegrated; they operate wells having about 90 per cent. of total potential production. The ten producing companies control pipelines extending into this area with a carrying capacity of only 316,000 barrels per day. Most of them from time to time purchase oil from other producers there.

Crude oil and natural gas occur together or in close proximity to each other, and the gas in a pool moves the contents toward the point of least resistance. When wells are drilled into a pool the oil and gas move from place to place. If some of the wells are permitted to produce a greater proportion of their capacity than others, drainage occurs from the less active to the more active. There is a heavy gas pressure in the Oklahoma City field. Where proportional taking from the wells in flush pools is not enforced, operators who do not have physical or market outlets are forced to produce to capacity in order to prevent drainage to others

having adequate outlets. In Oklahoma prior to the passage of the Act, large quantities of oil produced in excess of transportation facilities or demand therefor were stored in surface tanks, and by reason of seepage, rain, fire and evaporation enormous waste occurred. Uncontrolled flow of flush or semi-flush wells for any considerable period exhausts an excessive amount of pressure, wastefully uses the gas and greatly lessens ultimate recovery. Appropriate utilization of gas energy is especially important in the Oklahoma City field where, because of the great depth of the wells, the cost of artificially recovering the oil would be very high.

The first of the present series of proration orders took effect August 1, 1927, and applied to the then flush and semi-flush pools in the Seminole. Similar orders have been in effect almost continuously since that time. Soon after the discovery of oil in the Oklahoma City field, production exceeded market demand there. The first proration order applicable in that field took effect October 15, 1929. Such orders usually covered short terms because of rapidly changing potential production and market demand from each of the pools.

All the proration orders attacked by plaintiff were made pursuant to §§ 1, 3, 4, 5 and 6 of the Act. Each, and the findings that it contained, were made after notice to all interested persons and were based upon evidence adduced at the hearings. The allegations of the complaint that the orders were made by the commission without having heard the testimony of witnesses under oath or any legal evidence were not sustained before the court.

The commission construes the Act as intended to empower it to limit production to the amount of the reasonable daily market demand and to require ratable production by all taking from the common source. In current orders it has found that waste of oil will result in the prorated areas unless production is limited to such demand. In order No. 5189, June 30, 1930, it found that the potential production in the United States was approximately 4,730,000 barrels per day and that imports amounted to about 300,000 barrels creating a supply of over 5,000,000 barrels as against an estimated domestic and export demand of 2,800,000 barrels. And it found that the existing stocks of crude in storage exceeded the needs of the industry and that purchasers were unwilling to buy in Oklahoma for storage in any amount sufficient

to take the surplus of potential production in that State. Similar findings are contained in the commission's subsequent orders.

Based on findings of the daily potential of the Oklahoma City field and the amount of the market outlet for oil there—that is, the amount that could be produced without waste as defined by the Act, plaintiff at the time of the trial was limited by the proration orders to about six per cent. of the total production of its wells in that field. And the orders also operated to restrict plaintiff to much less than the potential production of its nine wells in the Seminole pools.

The court found that at all times covered by orders involved there was a serious potential overproduction throughout the United States and particularly in the flush and semi-flush pools in the Seminole and Oklahoma City fields; that, if no curtailment were applied, crude oil for lack of market demand and adequate storage tanks would inevitably go into earthen storage and be wasted; that the full potential production exceeded all transportation and marketing facilities and market demands; that accordingly it was necessary, in order to prevent waste, that production of flush and semi-flush pools should be restricted as directed by the proration orders and that to enforce such curtailment, with equity and justice to the several producers in each pool, it was necessary to enforce proportional taking from each well and lease therein and that, upon the testimony of operators and others, a comprehensive plan of curtailment and proration conforming to the rules prescribed in the Act was adopted by the commission and was set forth in its orders.

The commission, acting under § 5 of the Act and with the consent of the governor of the State, appointed one Collins as its umpire and agent and constituted certain producers in each pool an operating committee to assist him in administering the prescribed rules and regulations. Later, one Bradford was appointed assistant umpire and agent. He spent all his time in the Oklahoma City field leaving Collins to serve in the other prorated areas. They supervised the taking of gauges, ascertained daily production of prorated wells, checked the same against quantities transported and kept complete records to the end that wells in each pool should be operated in accordance with the commission's rules and that violations be detected and reported. No appropriation

had been made for the payment of umpires or agents. The Commission did not have sufficient regular help for the administration of the proration orders. Members of operators committees served without pay. Collins' salary and expenses have been paid by voluntary contributions of certain producers in the Seminole field and Bradford's by voluntary contribution of producers in the Oklahoma City field. In each field a great majority of the producers joined to raise such funds, and contributions were prorated on the basis of production. This method of paying for such help has been followed since 1927 and at all times has been known to the commission, the governor and the public. In that period there have been two sessions of the legislature, and it has not forbidden the practice or provided funds to pay for the work. Neither the umpire nor the members of the committee are public officers; they are mere agents or employees of the commission. The evidence does not establish that they have been guilty of favoritism or dishonesty or that the commission has acted arbitrarily or discriminated in favor of the groups paying such agents or that the plaintiff has suffered any injury by reason thereof.

The commission has not discriminated against the Oklahoma City field or any other prorated area nor in favor of the Seminole. The relation between potential production of each pool and the amount of crude oil that without waste could be produced therefrom was not the same in all prorated pools and therefore the applicable percentages of curtailment varied. The same pipelines and purchasers did not serve or take oil from all the pools, and in some the reasonable market demand was greater in proportion to potential production than in others. Some were prorated longer and had purchasers whose facilities do not extend to others. When oil was discovered in the Oklahoma City field the pools in the Seminole area were quite fully developed and some had passed flush production. The latter is a more favored location in respect of trunk pipelines and has a larger market demand although the daily production of the former is greater. The constant bringing in of new wells in the Oklahoma City field has resulted in a continuous and rapid increase in the potential production of that field whereas market demand for oil there has increased very slowly.

None of the commission's orders has been made for the purpose of fixing the price of crude oil or has had that effect. When the first order was made the price was more than two dollars per bar-

rel but it declined until at the time of the trial it was only thirty-five cents. In each case the commission has allowed to be produced the full amount of the market demand for each pool. It has never entered any order under § 2 of the Act.

It was not shown that the commission intended to limit the amount of oil entering interstate commerce for the purpose of controlling the price of crude oil or its products or of eliminating plaintiff or any producer or refiner from competition or that there was any combination among plaintiff's competitors for the purpose of restricting interstate commerce in crude oil or its products or that any operators' committee made up of plaintiff's competitors formulated the proration orders.

The evidence before the trial court undoubtedly sustains the findings above referred to, and they are adopted here.

1. Plaintiff here insists that the Act is repugnant to the due process and equal protection clauses of the Fourteenth Amendment.

We need not consider its suggestion that the business of production and sale of crude oil is not a public service and that it does not devote its property to the public use. The proration orders do not purport to have been made, and in fact were not made, in respect of services or charges of any calling so affected with a public interest as to be subject to regulation as to rates or prices.

Plaintiff insists that it has a vested right to drill wells upon the lands covered by its leases and to take all the natural flow of oil and gas therefrom so long as it does so without physical waste and devotes the production to commercial uses. But if plaintiff should take all the flow of its wells, there would inevitably result great physical waste even if its entire production should be devoted to useful purposes. The improvident use of natural gas pressure inevitably attending such operations would cause great diminution in the quantity of crude oil ultimately to be recovered from the pool. Other lessees and owners of land above the pool would be compelled, for self-protection against plaintiff's taking, also to draw from the common source and so to add to the wasteful use of lifting pressure. And because of the lack, especially on the part of the non-integrated operators, of means of transportation or appropriate storage and of market demand, the contest would, as is made plain by the evidence and findings, result in surface waste of large quantities of crude oil.

In Oklahoma, as generally elsewhere, land owners do not have absolute title to the gas and oil that may permeate below the surface. These minerals, differing from solids in place such as coal and iron, are fugacious and of uncertain movement within the limits of the pool. Every person has the right to drill wells on his own land and take from the pools below all the gas and oil that he may be able to reduce to possession including that coming from land belonging to others, but the right to take and thus to acquire ownership is subject to the reasonable exertion of the power of the State to prevent unnecessary loss, destruction or waste. And that power extends to the taker's unreasonable and wasteful use of natural gas pressure available for lifting the oil to the surface and the unreasonable and wasteful depletion of a common supply of gas and oil to the injury of others entitled to resort to and take from the same pool. *Ohio Oil Co.* v. *Indiana*, 177 U. S. 190. *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61, 77. *Bandini Co.* v. *Superior Court*, 284 U. S. 8, 19 *et seq.* *Brown* v. *Spilman*, 155 U. S. 665, 669. *Walls* v. *Midland Carbon Co.*, 254 U. S. 300, 323. *Rich* v. *Doneghey*, 71 Okla 204. *People* v. *Associated Oil Co.*, 211 Cal. 93, 100 *et seq.*

It is not shown that the rule for proration prescribed in § 4 or any other provision here involved amounts to or authorizes arbitrary interference with private business or plaintiff's property rights or that such statutory rule is not reasonably calculated to prevent the wastes specified in § 3.

We put aside plaintiff's contentions resting upon the claim that § 2 or § 3 authorizes or contemplates directly or indirectly regulation of prices of crude oil. The commission has never made an order under § 2. The court found that none of the proration orders here involved were made for the purpose of fixing prices. The fact that the commission never limited production below market demand and the great and long continued downward trend of prices contemporaneously with the enforcement of proration strongly support the finding that the orders assailed have not had that effect. And if § 2 were to be held unconstitutional the provisions on which the orders rest would remain in force. The unconstitutionality of a part of an Act does not necessarily defeat or affect the validity of its remaining provisions. Unless it is evident that the legislature would not have enacted those provisions which are within its power, independently of that which is

not, the invalid part may be dropped if what is left is fully operative as a law. *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540, 565. *Pollock* v. *Farmers' Loan & Trust Co.*, 158 U. S. 601, 635. *Reagan* v. *Farmers' Loan & Trust Co.*, 154 U. S. 362, 395-396. *Field* v. *Clark*, 143 U. S. 649, 695-696. Section 10 declares that the invalidity of any part of the Act shall not in any manner affect the remaining portions. That discloses an intention to make the Act divisible and creates a presumption that, eliminating invalid parts, the legislature would have been satisfied with what remained and that the scheme of regulation derivable from the other provisions would have been enacted without regard to § 2. *Williams* v. *Standard Oil Co.*, 278 U. S. 235, 242. *Crowell* v. *Benson*, 284 U. S. —, —. *Utah Power & Light Co.* v. *Pfost*, — U. S. —. The orders involved here were made under other sections which provide a complete scheme for carrying into effect, through action of the commission, the general rules laid down in §§ 3 and 4 for the prevention of waste. See *Julian Oil & Royalties Co.* v. *Capshaw*, 145 Okla. 237, 243. The validity of § 2 need not be considered.

2. Plaintiff contends that the Act and proration orders operate to burden interstate commerce in crude oil and its products in violation of the commerce clause. It is clear that the regulations prescribed and authorized by the Act and the proration established by the commission apply only to production and not to sales or transportation of crude oil or its products. Such production is essentially a mining operation and therefore is not a part of interstate commerce even though the product obtained is intended to be and in fact is immediately shipped in such commerce. *Oliver Iron Co.* v. *Lord*, 262 U. S. 172, 178. *Hope Gas Co.* v. *Hall*, 274 U. S. 284, 288. *Foster Packing Co.* v. *Haydel*, 278 U. S. 1, 10. *Utah Power & Light Co.* v. *Pfost, supra.* No violation of the commerce clause is shown.

3. Plaintiff assails the proration orders as unauthorized, lacking basis in fact and arbitrary. But it failed to show that the orders were not based upon just and reasonable determinations of the governing facts: namely, that proportion of all crude oil, which may be produced from a common source without waste, that the production of plaintiff's wells bears to the total production from such source. Gauges were taken to determine the potential production of each well under rules and regulations prescribed

by the commission and not shown to be inappropriate or liable to produce arbitrary or discriminatory results. It does not appear that the agents—umpires and committees—employed by the commission with the consent of the governor to enforce the provisions of the Act, did more than to make investigations necessary to secure for the commission data required to make the proration directed by § 4 or that they acted otherwise than as faithful subordinates. Plaintiff has not shown that any act or omission of these agents subjected it to any disadvantage or that the prorations were arbitrary or discriminatory in any respect. Obviously the commission, without agents and employees, could not make or enforce proration as directed by the Act. The plaintiff is not entitled to have the commission's orders set at naught and the purposes of the Act thwarted merely because, in the absence of legislative appropriations therefor, the salaries and expenses of agents or employees were paid out of funds raised by operators interested in having proration established under the statutory rule.

Proration, required to prevent waste defined in § 3 and to give effect to the rule prescribed by § 4, changes according to conditions existing from time to time and percentages valid at one time may be inapplicable, unjust and arbitrary at another. *Bluefield Co.* v. *Public Service Comm.*, 262 U. S. 679, 693. *Knoxville* v. *Water Co.*, 212 U. S. 1, 19. As plaintiff has failed to prove that any order in force at the time of the trial was not in accordance with the rule prescribed by § 4 or otherwise invalid, the part of the decree from which it appealed will be affirmed. But such affirmance will not prevent it in an appropriate suit, a different state of facts being shown to exist, from having an injunction to restrain the enforcement of any order proved to be not authorized by the Act or unjust and arbitrary and to operate to plaintiff's prejudice. Cf. *Euclid* v. *Ambler Co.*, 272 U. S. 365, 395.

No. 486.

This is defendant's appeal from that part of the final decree that declares that §§ 8 and 9 are not valid and enjoins the attorney general and county attorney from enforcing them. In its conclusions of law the court below declares that these sections in terms impose penalties for violation of the Act, and not for violation of the orders of the commission; that §§ 1, 3, 4, 5 and 6 are too indefinite and uncertain to warrant the imposition of the prescribed

penalties and that therefore both sections are invalid. The opinion points out that the Act is a penal statute and also a regulatory measure to be supplemented by rules, regulations and orders of the commission. It suggests that an operator or producer of oil from a common pool should not be required at the peril of severe penalties to determine whether in the operation of his oil well he is committing "economic waste" or producing in excess of the "reasonable market demands" because these terms are not defined in the Act and are of uncertain and doubtful meaning.

1. Defendants insist that no question concerning the validity of § 8 was before the court.

We do not find any direct or definite allegation in the record that defendants have threatened or are about to cause plaintiff to be prosecuted under § 8. The court found that no prosecution had been commenced against plaintiff, its officers or employees under that section. There is no finding, or evidence sufficient to require one, that any such prosecution was imminent or contemplated. And the opinion states in substance that § 9 was the only provision of the Act as a penal statute that was before the court.

Equity jurisdiction will be exercised to enjoin the threatened enforcement of a state law which contravenes the Federal Constitution whenever it is essential in order effectually to protect property rights and the rights of persons against injuries otherwise irremediable; and in such a case a person, who as an officer of the State is clothed with the duty of enforcing its laws and who threatens and is about to commence proceedings, either civil or criminal, to enforce such a law against parties affected, may be enjoined from such action by a federal court of equity. *Terrace* v. *Thompson*, 263 U. S. 197, 214, and cases cited. The burden was upon plaintiff seeking to invoke that rule definitely to show that in order to protect its property rights it was necessary to restrain defendants from enforcing § 8. Indeed the record before us indicates that plaintiff did not show that its rights were directly affected by any danger of prosecution under § 8 and therefore had no standing to invoke equity jurisdiction against its enforcement. *Oliver Iron Co.* v. *Lord*, *supra*, 180-181. *Massachusetts* v. *Mellon*, 262 U. S. 447, 488. *Aetna Insurance Co.* v. *Hyde*, 275 U. S. 440, 446 *et seq.* Undoubtedly § 8, if invalid, may be severed from other parts of the Act without affecting the provisions under which the prorations were made. *Ohio Tax Cases*, 232 U. S. 576, 594. It

follows that the lower court erred in passing upon the validity of that section, and the decree will be modified to declare that no question as to § 8 was before the court.

2. Defendants also maintain that no question as to the validity of § 9 was before the court.

The record shows that plantiff having taken crude oil in excess of the quantities allowed by the orders, the attorney general, May 28, 1931, brought suit under § 9 in a state court to have a receiver appointed for its wells. And he procured that court to issue a temporary injunction restraining plaintiff from producing oil or violating the Act or proration orders pending the appointment of a receiver. On the next day plaintiff filed an amended and supplemental bill applying for a stay of enforcement of the proration orders pending the determination of the appeal, No. 122, to this court.

June 13 the lower court, upon plaintiff's application and affidavits submitted by the parties, found that plaintiff would suffer irreparable loss and injury unless the stay be granted. And it entered an order: restraining the commission from instituting proceedings under § 6 of the Act; restraining the attorney general and county attorney from prosecuting under § 9 receivership proceedings against plaintiff; allowing plaintiff, on conditions which need not be stated here, to produce up to 10,000 barrels daily, and requiring the attorney general immediately to have the state court injunction dissolved.

It is clear, if § 9 is invalid, that the enforcement of its provisions pending the trial of this case would, as plaintiff claimed and the lower court found, have inflicted irreparable loss and damage upon the plaintiff. Defendants do not show or claim that the evidence does not establish that finding. The lower court had authority to stay the enforcement of the assailed orders pending the determination of plaintiff's appeal from the denial of its motion for temporary injunction. *Hovey* v. *McDonald*, 109 U. S. 150, 161. *Cotting* v. *Kansas City Stock-Yards Co.*, 82 Fed. 839, 857. *Cumberland Tel. Co.* v. *Pub. Serv. Comm.*, 260 U. S. 212. *Virginian Ry.* v. *United States*, 272 U. S. 658, 669 *et seq.* The jurisdiction of the court was properly invoked to determine whether plaintiff was entitled to protection against the shutting down and seizure of its wells and the sale of its oil pending the federal court's final decision.

The attorney general, though not required so to do, dismissed the suit in the state court, and here insists that, as no proceeding for a receiver was pending, the court erred in construing or passing on the validity of § 9. But, when regard is had to the facts and circumstances, it is clear that such dismissal did not require the court to hold that thereby the purpose of the attorney general and county attorney had changed or that prosecution under that section was no longer imminent. The court was therefore properly called upon to pass upon its validity.

3. Section 9 provides: "That in addition to any penalty imposed under the preceding section, any person, firm or corporation, violating the provisions of this act, shall be subject to have his or its producing property placed in the hands of a receiver by a court of competent jurisdiction, at the suit of the State through the Attorney General, or any county attorney, but such receivership shall only extend to the operating of producing wells and the marketing of the production thereof, under the provisions of this act." The language used applies to violations of the Act and does not extend to violations of orders of the commission. It is plain and leaves no room for construction. A direct and unambiguous expression would be required to warrant an inference that the state legislature intended to authorize the seizure of producers' wells and the sale of their oil for a mere violation of an order.

The context and language used unmistakably show that the section imposes a penalty and is not a measure in the nature of, or in aid of remedy by, injunction to prevent future violations. By § 6 the commission—which in respect of such matters is a court of record (state constitution, Art. IX, § 19)—is empowered to punish as for contempt violation of the commission's orders by fines up to $500 per day during continuance of such violation. §§ 3498, 3499, C. O. S.. 1921. *Planters' Cotton & Ginning Co.* v. *West Bros.*, 82 Okla. 145, 147. And § 8 declares that, "in addition to any penalty" that may be imposed by the commission for contempt, one directly or indirectly "violating the provisions of this act" shall be guilty of a misdemeanor and be punished by fine or imprisonment. And similarly the liability under § 9 is for "violating the provisions of this act" and is "in addition to any penalty" imposed by § 8. Both deal with an act already committed. Moreover, liability under § 9 is not limited to seizure and

operation of the offender's wells but extends to the marketing of his oil. Absolute liability arises from a single transgression, and prosecution therefor may be had after all occasion for restraint of production has ceased. There is nothing in the Act by which the duration of the receivership may be determined. An owner whose wells are so seized may not, as of right, have production reduced or withheld to await a better demand or have any voice as to quantities to be produced or continue to have his oil transported by means of his own pipelines or other facilities or have it sent to his own refinery or delivered in fulfillment of his contracts. Plainly such a taking deprives the owner of property without compensation even if the moneys received for oil sold less expenses are accounted for by the receiver. The suit is prosecuted by the State to redress a public wrong denounced as crime. The provisions of § 9 are not consistent with any purpose other than to inflict punishment for violation of the Act and they must be deemed as intended to impose additional penalties upon offenders having oil producing wells. *Boyd* v. *United States*, 116 U. S. 616, 634. *United States* v. *Reisinger*, 128 U. S. 398, 402. *Huntington* v. *Attrill*, 146 U. S. 657, 667, 668.

As § 9 declares that one "violating the provisions of this act shall be subject" to the prescribed penalties, it is necessary to refer to the regulatory provisions here involved. Section 1 prohibits "production of crude oil . . . in such manner and under such conditions as to constitute waste". Section 3 declares that, "in addition to its ordinary meaning", "waste" shall include "economic waste, underground waste, surface waste, and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands". Section 4 provides that whenever full production from any common source can only be obtained "under conditions constituting waste" then one having the right to produce from such source may take therefrom only such proportion "that may be produced therefrom, without waste, as the production of the well or wells" of such taker "bears to the total production from such common source of supply".

There is nothing to support defendants' suggestion that the regulatory provisions of the Act do not become operative until the commission has defined permissible production. As shown

above, § 9 does not cover violations of orders of the commission. The validity of its provisions must be tested on the basis of the terms employed. In *Connally* v. *General Construction Co.*, 269 U. S. 385, 391, this court has laid down the rule that governs here: "That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law. And a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law".

The general expressions employed here are not known to the common law or shown to have any meaning in the oil industry sufficiently definite to enable those familiar with the operation of oil wells to apply them with any reasonable decree of certainty. The meaning of the word "waste" necessarily depends upon many factors subject to frequent changes. No act or definite course of conduct is specified as controlling and, upon the trial of one charged with committing waste in violation of the Act the court could not foresee or prescribe the scope of the inquiry that reasonably might have a bearing or be necessary in determining whether in fact there had been waste. It is no more definite than would be a mere command that wells shall not be operated in any way that is detrimental to the public interest in respect of the production of crude oil. And the ascertainment of the facts necessary for the application of the rule of proportionate production laid down in § 4 would require regular gauging of all producing wells in each field, a work far beyond anything that reasonably may be required of a producer in order to determine whether in the operation of his wells he is committing an offense against the Act.

In the light of our decisions, it appears upon a mere inspection that these general words and phrases are so vague and indefinite that any penalty prescribed for their violation constitutes a denial of due process of law. It is not the penalty itself that is invalid but the exaction of obedience to a rule or standard that is so vague and indefinite as to be really no rule or standard at all. *United States* v. *Cohen Grocery*, 255 U. S. 81, 89. *Small Co.* v. *Am. Sugar*

Ref. Co., 267 U. S. 233, 239. *Connally* v. *General Construction Co., supra. Cline* v. *Frink Dairy Co.*, 274 U. S. 445, 454. *Smith* v. *Cahoon*, 283 U. S. 553, 564.

No. 122, dismissed.
No. 485, affirmed.
No. 486, modified and as modified affirmed.

A true copy.

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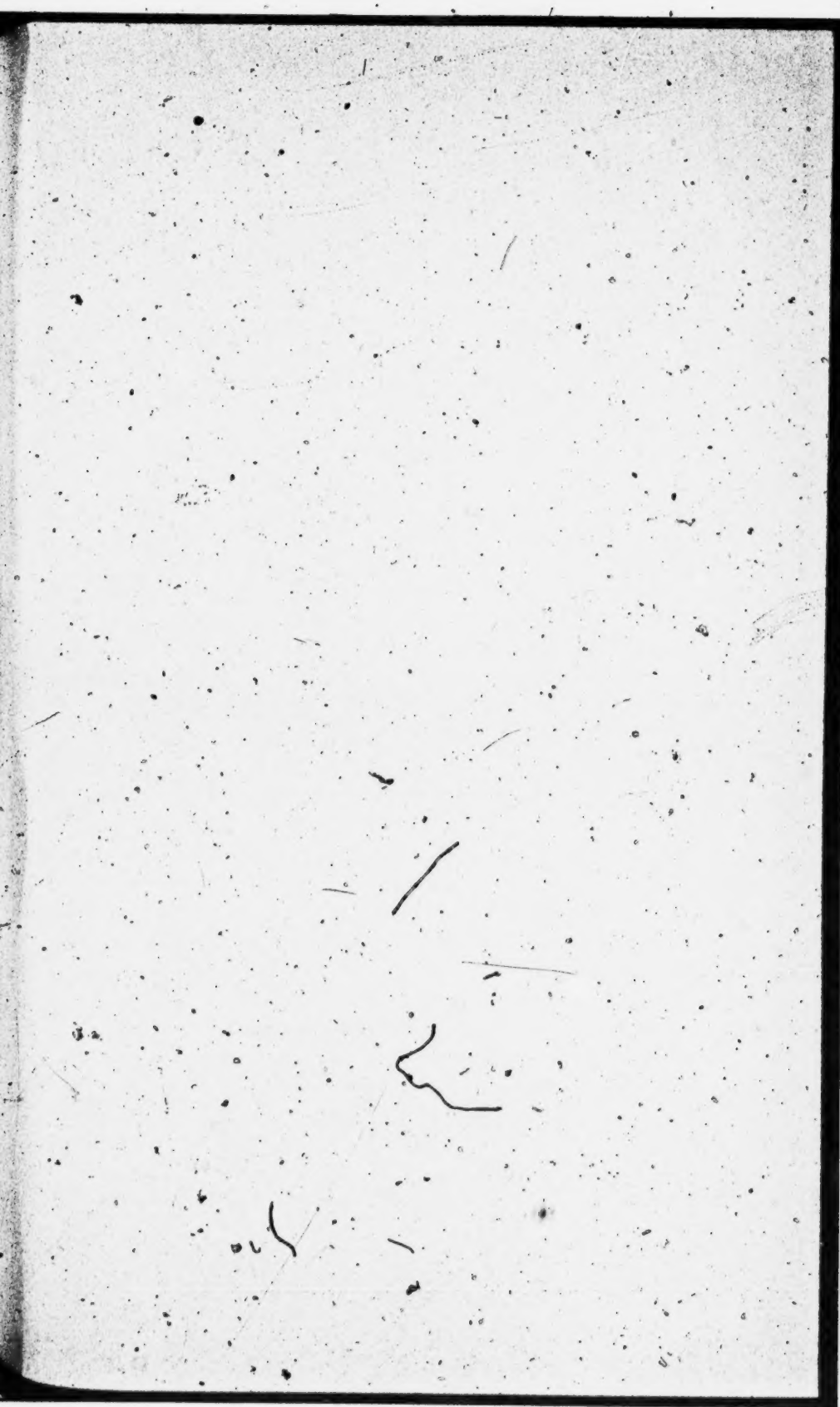
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